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ABSTRACT

The instructor's manual for a four to five day course designed to assist public sector managers in attaining a stable and productive labor relations environment is intended for use with two other books, the Reference Materials and the Case Materials. The course, created principally for use in a formal classroom setting, can be adapted to suit the needs of the participants. The subject matter is structured in seven units, basically keyed to the stages of the collective bargaining process. The unit topics are: collective bargaining process overview; why and how workers join unions; petition, election, and recognition stages; the negotiations process; negotiations (a simulation); contract administration; and an in-basket exercise (used as a tool for summarizing the entire course). Suggested total teaching time, teaching methods, and training aids are specified for each unit. The units are presented in a two-column format. One column provides instructor guidance such as notes, references, objectives, and further suggestions for techniques and teaching aids. A 33-item list of selected sources for instructors concludes the manual. (Author/MS)

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Collective Bargaining for Public Management (State and Local)

INSTRUCTORS MANUAL

CE 004 550

U. S. CIVIL SERVICE COMMISSION
BUREAU OF TRAINING
LABOR RELATIONS TRAINING CENTER
WASHINGTON, D.C. 20415

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INTRODUCTION

One of the most important public sector developments in the last ten years has been the growth of public sector collective bargaining. Because the public sector unions have come to power so rapidly, many public sector jurisdictions have experienced "growing pains" in adjusting from a unilateral (management only) to a bilateral (management and union) method of operation.

This course was developed under the Intergovernmental Personnel Act through a grant from the U.S. Civil Service Commission's Bureau of Intergovernmental Personnel Programs to the Commission's Bureau of Training. The actual development was done by the Commission's Labor Relations Training Center. The purpose of the course is to assist public sector managers in attaining a stable and productive labor relations environment. The course was created principally to be used in a formal classroom setting. However, if formal training is not conducted, the module may be used as a reference tool for managers. The following explanation may assist you in using the course materials.

Format

The course is divided into three separate books: the Instructor's Manual, the Reference Materials, and the Case Materials. You will need one Instructor's Manual for each instructor and a Reference Materials and Case Materials book for each participant and each instructor.

The subject matter is structured in seven units, basically keyed to the stages of the collective bargaining process. The first unit is entitled "The Collective Bargaining Process: An Overview." The first part of the unit deals with some general questions concerning labor relations. The last part of the unit is a brief view of each stage of the collective bargaining process: the unorganized stage, the organizing stage, the petition, election and recognition stage, the preparation for negotiations stage, the negotiations stage and the contract administration stage. The unorganized stage is treated in depth in Unit I because it is covered in no other unit. The other stages are briefly summarized in Unit I to prepare the scene for future in-depth discussion in the appropriate unit. The negotiations stage (Unit V) is presented as a negotiations simulation to be played out by the participants. Unit VII is an "in-basket exercise" which is to be used as a tool for summarizing the entire course.

The course was designed to be as flexible and adaptable as possible. Each unit–and even parts of units–is self-contained and severable, so that the instructor can, in effect, design a course to suit the needs of the participants. For example, you may choose to use only Unit I, the Overview, and add more specific information contained in other units. Or you may wish to present only the stage of the process which fits the current situation of the participants. Much information is included, as background information for the instructor; the instructor may wish to condense or modify the information depending on the length of the course and the needs of the participants. A bibliography of additional reference material is included in the Instructor's Manual.

The Reference Materials book contains pertinent articles on various subjects. Each article has been keyed into an appropriate point in the Instructor's Manual. Each article has also been assigned a number; the article is designated as "RN" to denote "Reference Number," a roman numeral which corresponds to the unit in which it is used, and an arabic numeral which places it in sequence with the rest of the materials in the Unit. For example, the first reference cited in Unit I is "The Emergence of Public Sector Collective Bargaining"; it is given the number RN I-1.

The materials in the Case Materials book are exercises for the participants; they are designated as "CM" and numbered in the same way as the Reference Materials. In the Instructor's Manual, you will find guidance for using the cases either within the subject matter column or at the end of the Unit. Guidance at the end of each unit is designated as "TG" and numbered in the same manner as Reference Materials and Case Materials.

Time Requirements

In the upper right-hand corner of the first page of each unit, you will find an approximation of the teaching time of each unit. These times are only suggested limits; each unit may be lengthened or shortened to fit the time available. If you decide to present the entire course, four or five days will be required, depending on which negotiation simulation you use.

Films

Several films have been cited in the Instructor's Manual; in each case, the organization where the film can be obtained is given. In addition to the sources listed in the Instructor's Guide, the following are national distributors of films relating to the labor movement. These sources may also be able to suggest substitutes for the films cited.

United Auto Workers Film Library
East Jefferson Avenue
Detroit, Michigan 48214

Labor Education Division
Roosevelt University
430 South Michigan Avenue
Chicago, Illinois 60605

AFL-CIO
Catalogue listing films available:
AFL-CIO Pamphlet Division
815 Sixteenth Street, N.W.
Washington, D.C. 20006

Contemporary Films (distributors for National Film Board of Canada films)
330 W. 42nd Street, New York, N.Y. 10036
828 Custer Street, Evanston, Illinois 60202
1211 Polk Street, San Francisco, California 94109

Tailoring the Course to Your Jurisdiction

The Public sector labor relations is a fast-moving field; changes in state and local labor laws occur frequently. The information concerning state and local laws contained in this course is current as of June 1, 1974. However, you should consult the Bureau of National Affairs' *Government Employee Relations Report* or a similar source for current developments.

In designing this course it would have been virtually impossible to key it specifically to the situation in each of the fifty states. There are many points at which you will want to examine your jurisdiction's situation and law specifically. On certain points, an overview of the various types of legislation–private, Federal and public sector–is given so that you will have a background against which to compare and contrast your collective bargaining legislation. Additionally, references are often made to the private and Federal experience and "case law" to provide insight into an as-yet developing field.

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TRAINING PLAN

COURSE TITLE: COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE, COUNTY & LOCAL)

UNIT TITLE: The Collective Bargaining Process: An Overview

UNIT: I

TOTAL TIME: 4 - 8 hours

METHODS: participatory lecture, case studies

TRAINING AIDS: Case Studies

Subject Matter Content	Instructor Guidance
I. INTRODUCTION AND COURSE OBJECTIVES	**OBJECTIVE:** To warm up participants and give them an idea of the objectives of the course. To give the instructor an idea of the labor-relations experience and problems of each participant **Technique:** Have a gov't official make brief introductory remarks and introduce training staff.
A. Introduction	
1. Welcome Participants	
2. Introduce Staff and/or Guests - observers, if any	
3. Have participants introduce themselves to the group	
a. Name	
b. Agency or organization unit	
c. Job responsibilities, esp. as affects Labor Relations	
d. Unions, if any, with which dealings existed	
B. Course Objectives	
1. To present a basic overview of labor relations theory and practice under applicable state and/or local laws, orders, and regulations.	
2. Course consists of seven units.	
3. Direct participants through reference notebook, noting that each unit corresponds to a unit of the course.	
4. Explain "housekeeping" details — starting and ending times, eating facilities, phones, health facilities.	
C. Problem census	**OBJECTIVE:** 1) To identify problems the participants would like to resolve during the course. 2) To make the course as relevant as possible to the participants needs. 3) To obtain participant involvement and discussion as early as possible in the course.
1. To make the problem census work effectively course directors should use the following procedures:	
a. Introduction of the problem census	
(1) Inform the participants of the objectives of the exercise.	
(2) Tell them we want to know the actual labor relations problems which are bothering them on the job.	

(3) Tell them we want them to share their problems with their fellow class members who may have solved some of them.
(4) Inform them that we will address ourselves to the problems they identify whenever possible throughout the course.

b. Conduct of the problem census

(1) Divide the class into small groups of 5 - 6 people (depending on class size).
(2) Give each group a piece of flip chart paper and a magic marker.
(3) Have each group designate a spokesman and a recorder (separate persons) who will also record the problems on the flip chart paper.
(4) Give the groups 30 minutes to discuss and record their problems.
(5) Ask each group spokesman to summarize his group's problems to the class in about five minutes using the flip chart paper fastened to the wall as a visual aid.
(6) After all group spokesmen have completed their presentations, take about 15 minutes to summarize the problems, where appropriate, to note problems which have been identified by more than one group and to eliminate problems which are outside of the objectives of the course.

Materials Required:
Newsprint flip chart paper;
Magic Markers (dark colors);
Masking tape

c. Follow-up of problem census

(1) Leave the flip chart papers on the classroom wall throughout the course.
(2) When introducing a course unit, point out problems identified during the census which will be addressed during the unit. When summarizing a completed unit, note any solutions to problems which have been discussed.
(3) Inform guest lecturers and center staff members who are teaching units of those problems which they should cover during their assigned unit.

(4) During the course wrap-up take 10 - 15 minutes to review the principal problems identified during the census and indicate possible solutions which have been developed during the course.

II. BRIEF HISTORY AND PRESENT DIRECTION OF PUBLIC SECTOR COLLECTIVE BARGAINING

A. Emergence of The Collective Bargaining Process

Instructor's Note: History of labor relations is also contained in Unit II. If Unit II is to be presented, you may wish to shorten your discussion of union history and growth at this point.

1. Introduction

Trade union and association representation of government employees at all levels—federal, state, local—experienced phenomenal growth since 1960. Present estimates are that one-fourth of all employees are represented. Three-fourths of all cities with populations over 10,000 have at least one union or association. How did this happen?

Reference Materials:
"The Emergence of Public Sector Collective Bargaining" (PN I-I)

"Glossary of Collective Bargaining Terms" (RN I-2)

2. Private sector

a. 1933 – Section 7(a) of National Industrial Recovery Act – right of employees to organize and bargain collectively without interference or coercion by employers.

b. 1935 – National Labor Relations Act (Wagner Act). First national labor policy protecting the right of workers to organize and to elect representative for collective bargaining.

c. 1937 – Wagner Act held constitutional by U.S. Supreme Court.

d. 1947 – Taft-Hartley Act-amended the NLRA, providing greater protection of management rights in dealing with labor unions.

NOTE: The term "union" as used here refers to any employee organization with representation status, i.e. trade union, association, or independent group.

Subject Matter Content	Instructor Guidance
e. 1959 – The Labor-Management Reporting and Disclosures Act (Landrum-Griffin Act) designed to eliminate improper activities by labor and management. Act provides for reports describing labor organizations, financial dealings, business practices, unions in trusteeship and safeguards for union election procedures.	
3. Public Sector	
a. 1912 – Lloyd-Lafollette Act grants postal employees (and, by extension, all Federal employees) the right to form and join labor organizations and to petition Congress.	
b. 1958 – Mayor Wagner (son of Senator Wagner) issues Executive Order 49 providing measure of bargaining for New York City municipal workers.	
c. 1959 – Wisconsin legislature includes municipal employers and employees under state's "Little Wagner Act."	
d. 1962 – President John F. Kennedy issues Executive Order 10988 – introducing collective bargaining in Federal service.	
e. 1961-1974: public sector expansion	
(1) By 1974, 26 state legislatures enact public sector collective bargaining laws. Some laws cover individual services such as police, fire, schools while others blanket all services of state, county and municipal government.	Most recent state law is Florida in July 1974.
(2) In 1969 President Nixon issues Executive Order 11491, providing third-party mechanism for resolving labor-management disputes.	
(3) States of Hawaii and Pennsylvania, (1970) enact collective bargaining laws which grant certain public employees the "right to strike."	

(4) U.S. Postal Service workers strike in 1970. First major strike of Federal employees. Congress enacts Postal Reform Law which provides full collective bargaining administered by National Labor Relations Board except "no right to strike" and cannot bargain "union security."

(5) According to BLS, work stoppages, in public sector at the state and local level increase from 15 in 1958 to 388 in 1973. Man Days lost due to work stoppages increased from 7,500 to 2,300,000 per year over the same period.

NOTE: Despite this activity, most jurisdictions have no provision for collective bargaining.

B. Growth of Union Strength — Some Perspectives

1. Two basic factors influenced the growth of public sector unions

a. Tremendous growth in public employment in the last twenty years

Reference: Bureau of Labor Statistics

(1) Approximately 14 million people are employed in some type of civil service, an increase of 120% in last 20 years. Private sector employment increased during the same period by only 41%.

(2) Government (at all levels) is the largest single employer. Six out of ten new jobs are in the public sector.

(3) 2.7 million Federal employees: 26% increase.

(4) State and Local: 11.6 million employees: 254% increase

(a) Local: 8.5 million employees
(b) State: 3.1 million employees

Bureau of Labor Statistics as of May, 1974

(5) Employment will probably continue to grow: State and local projected to rise to 13.8 million by 1980.

b. Acceptance of unionization and collective bargaining as respectable and viable in public sector.

(1) Thirty-eight states have some type of legislation or Executive Order permitting some, if not all, types of public employees to organize.

TRAINING PLAN

COURSE TITLE: **COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE, COUNTY & LOCAL)**

Page

UNIT NO.

UNIT TITLE: **The Collective Bargaining Process: An Overview**

Subject Matter Content	Instructor Guidance
(2) Twenty-five states require parties to meet and confer, or engage in collective bargaining. (3) Seven states permit, in varying degreees, the right to strike (Pennsylvania, Hawaii, Alaska, Vermont, Montana, Oregon and Minnesota). (4) Federal Executive Order 11491, as amended, requires agreement negotiation with exclusive representative, as did E.O. 10988.	
2. **Under this impetus, public sector unionism has grown rapidly in both membership and representation**	**NOTE:** These statistics are repea in Unit II.
a. American Federation of State, County, and Municipal Employees, AFL-CIO, between 1960-1974, grew from 210,000 members to 700,000 members. (1) Represents over 1.3 million employees. (2) Fastest growing union, public or private.	
b. National Education Association: (1974) 1.5 million members.	
c. American Federation of Teachers: (1960-1974) grew from 56,000 to 420,000 membership	
d. California State Employees Association: (1961-1974); grew from 89,000 to 113,000; represents 125,000	**NOTE:** State civil service associa have a long history and substanti membership, nearly 700,000 in 1973. Conventional union organi zation at the state level has been weakest compared to Federal an local levels.
e. New York Civil Service Employees Association: 75,000 to 190,000; represents 250,000.	
f. These statistics show tremendous growth in public employee organization in the 1960's and early 1970's. (1) Many employee associations, previously with only professional goals, have changed their orientation to also include collective bargaining and grievance representation.	

III. SOME BASIC ISSUES CONCERNING PUBLIC SECTOR COLLECTIVE BARGAINING

The rapid growth and spread of public sector unionism have raised issues of importance to public managers. This section will briefly address some of these areas.

Note: This brief outline of some critical issues in public sector labor relations is to set the context for discussion.

A. What is Collective Bargaining?

1. Collective bargaining (sometimes called bilateralism) may be defined as a process through which employees select a representative who deals with management within a systematic framework to seek agreement on the terms and conditions of employment.

2. The framework of collective bargaining should provide for the protection of the rights of management, the employee organization, employees, and the public.

3. Collective bargaining in the public sector has several primary goals.

   a. Advancement of the public interest by introducing modern and progressive work practices to facilitate productivity.

   b. To insure the well-being of employees and the efficient administration of the government by providing a structure and opportunity for employees to participate in the formulation and implementation of personnel policies and practices affecting the conditions of their employment.

   c. To provide a systematic framework for resolving employee-management conflict over the terms and conditions of employment and for the protection of the rights of the parties.

4. The term "collective bargaining" encompasses many styles of employee-management dealings.

Subject Matter Content | **Instructor Guidance**

a. In some jurisdictions, we find collective bargaining, often required by legislation, which closely parallels the private sector model of bargaining, including bargaining on wages and other economic matters.

b. In other jurisdictions, a range of situations can be found

(1) In the absence of legislation, bargaining may take place if the jurisdiction chooses to recognize the employee representative

(2) In some cases the recognized unit is based on labor organization membership rather than an exclusive unit based on majority determination.

(3) Some states provide for "meet-and-confer" sessions and non-binding memoranda of understanding.

NOTE: "Meet and confer" does not require the employer to negotiate or to accept the union's proposal. Such sessions are advisory only.

c. Where no collective bargaining legislation exists, it is possible to find an entire range of collective bargaining styles within a single state as each jurisdiction makes its own ad-hoc policy.

5. Despite the variety of approaches, any method of dealing with employees through a designated representative on issues concerning personnel policies, practices and working conditions may be called collective bargaining for purpose of this discussion.

NOTE: As of 1974, 16 states had no statewide merit personnel system. *Bureau of Intergovernmental Personnel Policies*

B. Impact of Collective Bargaining on Personnel Systems
Many state and local jurisdictions have a formal personnel system based on merit principles. Certain federal grants-in-aid require a merit-based personnel system. Collective bargaining does not supplant merit principles, nor is it a substitute for an overall system of personnel management. Rather, merit principles and collective bargaining can, and do, co-exist. Collective bargaining and merit principles are compatible as evidenced by emerging patterns in public sector employee-management relations across the country.

1. Definition and distinction between merit principles and merit systems.

Reference: Public Law 91-648.

a. The merit principles, as stated by the Intergovernmental Personnel Act of 1971, are:

(1) recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment;
(2) providing equitable and adequate compensation;
(3) training employees, as needed, to assure high-quality performance;
(4) retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected;
(5) assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, or religious creed and with proper regard for their privacy and constitutional rights as citizens; and
(6) assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

b. A merit system may be defined as the set of laws, rules, regulations and personnel practices which implement or maintain merit principles. In addition to those personnel policies designed strictly to maintain merit principles, many jurisdictions have developed comprehensive civil service systems covering all areas of personnel management.

2. The accommodation of merit systems and collective bargaining cannot be at the expense of merit principles.

a. Merit principles are not negotiable.

b. Merit systems are subject to change as conditions change.

c. Managers must distinguish between changes in personnel procedures which do not infringe on the merit principle and changes which might alter the merit system.

d. Collective bargaining is not a substitute for existing personnel management systems. It is essentially a means to make the system better in the managing of human resources through bilateral determination of personnel policies affecting the workforce. It makes personnel management more responsible to the needs of the workforce, and is compatible with the public interest.

e. Collective bargaining is a balanced arrangement.

(1) Management reserves the right to manage within the framework of laws, regulations and personnel policies established through collective bargaining.

(2) The system of rules and procedures observed by management in dealings with its employees are potential areas for bilateral determination.

f. The mission of a public agency is a matter of public policy and is not subject to collective bargaining.

C. What is the Scope of Bargaining?

In the private sector there are few prohibited areas of bargaining. By contrast, in the public sector, laws, regulations, and personnel systems may restrict areas of bargaining. As a result, public managers must ascertain what issues can or must be dealt with bilaterally.

1. The jurisdiction's collective bargaining law, executive order or regulation may prescribe the scope of bargaining.

a. The law may prohibit bargaining (Colorado).

b. The law may permit bargaining without any requirement to bargain, thus allowing the employer to refuse to bargain (Arkansas).

NOTE: Discuss your state and/or local collective bargaining law or regulation here.
Collective bargaining prohibited?
No Law?
Atty General or Court Decision?
Meet and Confer Law?
CB Law – No Strike?
CB Law – No Strike – Allows Union Security?
CB Law - Right to Strike?
You may use "Where Does Your State or Local Government Fit?" **(CM I-1)**

Subject Matter Content	Instructor Guidance
c. The language of the law may exclude areas such as wages (Massachusetts) or some union security measures (many states).	
d. The law may specify a broad scope of bargaining similar to the language of the National Labor Relations Act: wages, hours, and other terms and conditions of employment (Wisconsin is one example).	
e. Where no law exists, ad-hoc compromises, executive orders, local laws, or court decisions may set the scope of bargaining.	
2. State and local status may exempt certain areas from bargaining; for example, right-to-work statutes limit union security measures in some states.	
3. If areas of the personnel system are regulated by higher authority, these regulations may be exempt from bargaining.	
4. As already discussed, merit principles should be exempt from bargaining.	
5. Unions or associations will tend to expand the scope of bargaining in areas where limitations are not set by law or regulations.	
a. Social workers: case load.	
b. Teachers: class size, curriculum, text books.	
c. Other social concerns: paternity leave, ecology, etc.	
6. If the union proposal is considered non-negotiable, management should look behind the proposal to find a solution to the problem. Consider questions raised by the exclusive representative as a problem that should be dealt with in one fashion or another. Negotiations thus serve both management and union as a mechanism for communication and problem solving.	

D. The Battle of the Budget & Other Legislative Dilemmas

1. Legislature may refuse to implement the contract negotiated by the Executive Branch.
2. Legislature may refuse to budget money needed to fulfill terms of a negotiated agreement. (Connecticut, for example, has defined the relationship between the legislature and the executive branch: any portion of the contract requiring funds for its administration must be submitted to the legislature. If the legislature approves the contract clause, funds must be appropriated.)
3. Other jurisdictions time contract renewal dates so that contracts can be renegotiated prior to the date the legislature sets the budget.

NOTE: Discuss any applicable state/local conflicts. Discuss relationship between Executive and Legislative branches in area of labor relations.

E. Who Administers the Collective Bargaining Law? (Third Parties)

1. In private sector labor relations, the Federal government through the National Labor Relations Board, administers laws applicable to employers and unions. It was recognized that a neutral third party was the best vehicle for impartially determining disputed areas between unions and management.
2. In the Federal sector, the Executive Order establishes independent administrative bodies.
3. What areas of labor-management relations lend themselves to involvement by a third party?
    a. Unit determination.
    b. Election certification procedures.
    c. Processing of unfair labor practice charges.
    d. Impasse and dispute resolution machinery.

NOTE: Discuss before listing (a) — (d). In the private sector, the NLRB is involved in a - c. The Federal Mediation and Conciliation Service is an impartial body that assists in dispute resolution. In the federal sector, the Federal Labor Relations Council administers the Executive Order, the Federal Services Impasse Panel performs d, and the Assistant Secretary for Labor Management Relations oversees a, b and c.

4. New York City's Office of Collective Bargaining is an attempt at independent third party administration of labor relations law. Some states have delegated such authority to State Labor Relations Boards. The primary benefit is its impartiality.

F. **Arbitration: Binding or Advisory?**

1. Arbitration may be invoked when the parties cannot agree on a solution to a problem. They then agree to allow a neutral third party to make the decision for them.

    a. Rights Arbitration: Permits a third party to render decisions on grievances over the interpretation and application of the contract or individual employee work problem.

    b. Interest Arbitration: If, during contract negotiation, the parties are at impasse over certain issues, they may agree to arbitration. Interest arbitration may be seen as an alternative to striking.

NOTE: Discuss briefly any third party machinery existing in your locale.

2. The parties may agree to advisory (no guarantee they will accept the decision of the arbitrator) or binding (must accept decision of arbitrator) arbitration

3. Some states (Michigan, Pennsylvania) require binding arbitration and prohibit strikes for police and firemen

G. **The Right to Strike**

1. In recent years several states have passed legislation allowing all or certain categories of public employees to strike, as long as the strike does not endanger public health and safety.

2. Generally, public service employees are denied the right to strike because of the monopoly character of government, and the need to maintain public services.

NOTE: The last several years have brought a surge of public employee strikes, the large majority of which were "illegal." It is best to realize that strikes can occur without enabling legislation. In states where there are very punitive laws against strikes, these have not proved a deterrent.

Subject Matter Content	Instructor Guidance

3. Absent a right to strike, various jurisdictions have sought alternate, non-violent methods of resolving labor-management disputes such as factfinding and arbitration.

IV. TRENDS IN PUBLIC SECTOR UNIONISM

A. Continued organization as unions and associations grow in strength and public employees grow in number.

B. Many states will enact or revise labor relations laws. New laws are likely to:

1. Be more comprehensive and specific
2. Require collective bargaining
3. Allow limited right to strike or provide mandatory use of third party resolution of disputes
4. Allow some type of union security

C. Strikes are likely to continue unless alternatives for resolution are found.

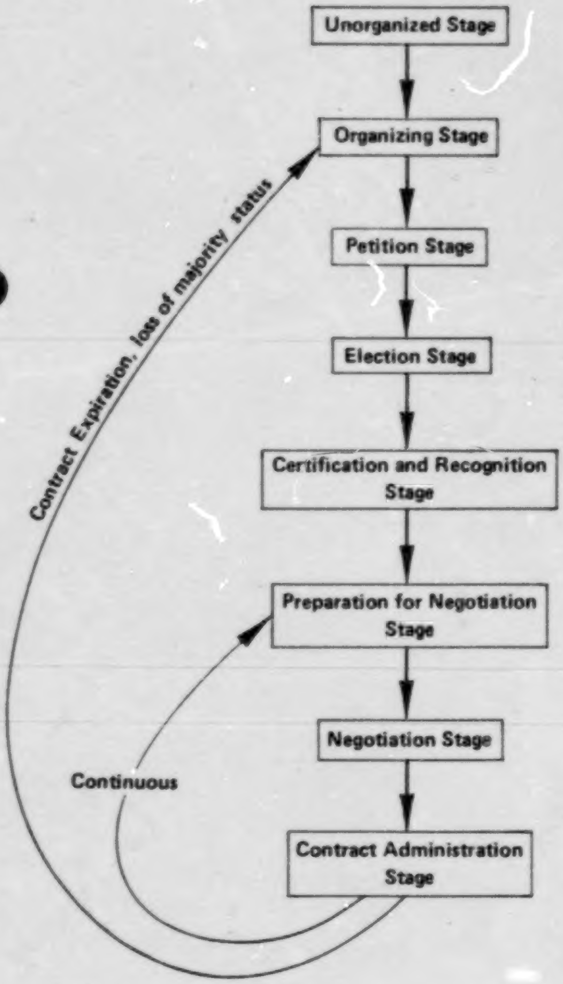
D. As collective bargaining statutes are liberalized, and unions and associations become more established, there will be increased contract negotiation and decreased recognition disputes.

Subject Matter Content	Instructor Guidance

V. UNDERSTANDING THE COLLECTIVE BARGAINING PROCESS

A. Pert Chart of Stages of Collective Bargaining Process

1. Visual of Collective Bargaining Process Pert Chart


Unorganized Stage
Organizing Stage
Petition Stage
Election Stage
Certification and Recognition Stage
Preparation for Negotiation Stage
Negotiation Stage
Contract Administration Stage
Contract Expiration, loss of majority status
Continuous

OBJECTIVE: (Thrust of this unit is to give participants a very brief overview of the collective bargaining process using charts or newsprint and playing out the process as a sequential pert chart. Bear in mind this is a brief overview, not an indepth lecture. In playing out the process key works or phrases must be used under several of the stages. The instructor will come back in later units and detail the important principles or concepts of collective bargaining from the key works and phrases. It is designed to show that there is much more to collective bargaining than just negotiating a contract.)

Reference Materials:
LRTC Pamphlets – The Collective Bargaining Process (RN I-3)

The Impact of Collective Bargaining on Management (RN I-4)

Teaching Aid:
Charts or Newsprint – based on LRTC Pamphlet – The Collective Bargaining Process; Charts # 1 - # 8

Subject Matter Content

B. Collective Bargaining is a process

1. Industrial democracy — many concepts of political democracy carried over to bargaining process
2. Historically unique to United States and Canada
3. Contains many procedures designed to help channel and resolve conflict between employees and management such as bilateral determination of working conditions, unfair labor practice remedies, grievance adjustment, arbitration, and impasse resolutions.
4. Provides employee participation in the determination of
   - a. Job future
   - b. Individual dignity and justice on the job
   - c. Wages, hours, and other terms and conditions of employment, including personnel policies and practices.

VI. THE UNORGANIZED STAGE

A. The Scene at unorganized stage.

1. No formal recognition, although labor organization may be there lobbying for improved employee benefits.
2. Management deals with employees on unilateral and individual basis; normally one-way communication.

B. What steps should management take at this stage?

1. Develop a management policy and philosophy
   - a. Clearly and specifically define, in writing, principles to be observed by management at all levels in anticipation of relations with labor organizations. This statement will probably reiterate the jurisdiction's law.

Instructor Guidance

NOTE: The "Unorganized Stage" is discussed here in detail. It is not covered in a separate unit.

Reference Materials:
In the Reference Materials you will find "Guidelines for Government Management in the Organization and Management of Labor Relations" **(RN I-5)**. These "Guidelines" provide advice to management in structuring the labor-management relationship. They deal in some depth with the development of a management philosophy and policy in labor relations. To assist managers in drafting these vital documents, the Reference Materials book contains "A Management Labor Relations Philosophy" **(RN I-6)** and "A Management Labor Relations Policy" **(RN I-7)**. These documents are drafted from the standpoint of a mock public sector Service. The points covered are valid, certainly, but should not be taken as hard-and-fast guidance. Each department's policy and philosophy should respond to the unique situation at hand. The mock documents are intended to give managers an idea of what the policy and philosophy might contain.

Subject Matter Content	Instructor Guidance

b. Affirm management's commitment in the public interest to:
   - (1) Modern and progressive work practices
   - (2) Rights of employee and employee organization
   - (3) Management rights and responsibilities
   - (4) High standards of employee performance
   - (5) Improved well-being of employees through participation in determination of personnel policies, practices and working conditions

2. Review state and/or local labor-relations statutes, regulations and case law to determine

a. Employee and union rights in organizing

b. Necessary management's conduct after union obtains recognition (meet and confer, collective bargaining)

3. Review present personnel policies and practices to determine areas related to: merit principles and therefore non-negotiable; management rights; and potential areas of negotiation.

4. Review work rules and practices to determine

a. Which are necessary to accomplish the agency mission?

b. Which "past practices" have changed rules?

c. Possible areas of union concern?

5. Develop and issue an employee handbook

a. List work rules, productivity standards, conduct standards

b. Outline advantages of employment: higher wages relative to community, attractive fringe benefits (leave, retirement plan, insurance, etc.)

c. Outline employee rights: appellate procedures, rights in reductions-in-force, etc.

6. **Develop a "management team"**
    a. Who is on "management team"?
        (1) Line Personnel
            (a) Executives
            (b) Middle-management
            (c) First-line supervisors (key)
        (2) Staff Personnel
            (a) Personnel-labor relations managers
            (b) Personnel specialists (classification, placement, wage and salary)
            (c) Fiscal and Budget managers
            (d) Legal officers and managers
    b. Define management training needs in labor relations and train personnel as necessary.
7. **Develop a system of management communications**
    a. That keeps each member of the team informed of all developments in labor relations
    b. Allows communication to flow upward and downward
        (1) Importance of making first-line supervisors a part of management
            (a) First-line supervisors will administer any contract negotiated
            (b) First-line supervisors have current information on what is going on at the workplace
    c. A system of intra-management communications insures that:
        (1) Management officials and supervisors do not receive conflicting information on labor relations.
        (2) The possibility of unfair labor practices is reduced.
        (3) Supervisors are informed by management before they hear from employee representatives.

8. Begin to formulate and implement labor relations plan and strategy

    a. In accordance with labor relations policy and philosophy, define short-and long-range labor relations goals.

    b. What steps must be taken to facilitate achievement of goals?

        (1) Possible reorganization of personnel staff to facilitate collective bargaining and provide labor relations support for line-management
        (2) Possible revision of agency regulations

    c. Set up program for annual review and evaluation of labor relations program

VII. THE ORGANIZING STAGE OF THE COLLECTIVE BARGAINING PROCESS

OBJECTIVE: Same

A. The scene at the organizing stage

1. Organizers, either employees or full-time organizers, are on the scene attempting to interest employees in being represented by their organization

    a. Literature is distributed

    b. Membership and/or designation cards are solicited

B. What is required?

NOTE: Check applicable laws or court decisions for delineation of rights in your jurisdiction. These are simply general rules.

1. Understanding employee rights (Key)

    a. The right to join, form or assist an organization or to refrain from doing so

    b. The right to distribute materials and solicit membership or designation cards on non-work time in non-work areas.

    c. The extent to which employees may exercise these privileges without interference, restraint or coercion

2. Understanding rights of the labor organization (Key)
    a. The union or association is generally guaranteed reasonable access to employees
    b. Labor organization staff organizer's access to employees is generally more limited than for employees
3. Understanding management rights and responsibilities.
    a. Neutrality
        (1) In many jurisdictions, management is required to remain neutral on the question of organization.
            (a) In the private sector, management can oppose unionization within certain limits.
            (b) In some jurisdictions, especially where no collective bargaining statute exists, or there is an anti-collective bargaining statute, there is no limitation on management activity.

NOTE: Find out the requirements of your jurisdiction's law and reiterate the public policy. Where opposition is permitted, you may want to discuss briefly if it is in management's best interest to express anti-organization sentiment

VIII. THE PETITION, ELECTION AND CERTIFICATION STAGES OF THE COLLECTIVE BARGAINING PROCESS

OBJECTIVE: To inform managers of what is required of them at this stage of the collective bargaining process

A. The scene at the petition stage

1. Labor organization submits petition for election
    a. Accompanied by show of interest
    b. Includes statement of appropriate bargaining unit requested

B. What is required?

1. Show of interest by employees
2. Basic understanding of unit determination criteria

TRAINING PLAN

COURSE TITLE: **COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE, COUNTY & LOCAL)**

UNIT NO. I

UNIT TITLE: **The Collective Bargaining Process: An Overview**

Subject Matter Content	Instructor Guidance
C. Show of interest by a labor organization with petition	
1. Show of interest is generally a percentage of the employees in the unit petitioned for	
a. What showing of interest is required in your jurisdiction?	**NOTE:** Both the number or percentage of interest required and the form (i.e. sheet petitions, membership list, authorization cards, etc.) as it is required in your jurisdiction should be discussed.
b. How is this determined?	
c. Can supervisors be represented or become involved?	
2. If another labor organization also wishes to be on the ballot, it must also have a show of interest	
a. The intervening labor organization is generally required to bring in a smaller percentage as a show of interest.	
(1) What does your jurisdiction require?	
(2) The signatures on the intervenor's petition may be the same signatures as on the first petition. At this stage, the signatures only show that the employees want an election on the question of representation.	
3. In some jurisdictions, management may recognize a labor organization which presents a majority showing of interest. No election is then required.	
a. Does your jurisdiction allow exclusive recognition without an election?	
D. Importance of an appropriate bargaining unit	
1. Define "unit" – group of employees that union is seeking to represent	
2. Draw clear distinction between "union" (organization) and "unit" (employees represented). Point out that employees who are in the bargaining unit are not necessarily members of the union or association. This should clarify the difference between union and unit.	

Subject Matter Content | **Instructor Guidance**

3. Criteria for unit determination

   a. Naturally, criteria vary from jurisdiction to jurisdiction, depending on the labor legislation (or lack of it). Of course you will want to plug in your local criteria. Three general criteria applied in varying combinations are:

NOTE: Which criteria does your jurisdiction use? Is management able to express its opinion on the appropriatemess of the unit? For further discussion on unit determination, see Unit III.

(1) Community of interest
   (a) Similar duties
   (b) Interchange of jobs and work
   (c) Skills and education required
   (d) Pay methods and systems
   (e) Similarity of pay and benefits
   (f) Common supervision
   (g) Desires of employees

(2) Effective dealings
   (a) What authority does management, at the level of the unit, have to engage in meaningful bargaining with the union?
   (b) What degree of personnel, budgetary and fiscal control does management have at the level of the unit?

(3) Efficiency of operations
   (a) Basically a management-oriented criterion
   (b) Will it be efficient for management to deal with the union at the level of the unit?
      i. Is there a common management element?
      ii. Will the creation of the proposed unit cause fragmentation, incongruent personnel practices?
      iii. Will management have to negotiate many contracts for an essentially homogeneous work force?
   (c) Will the proposed unit adversely impact efficient and economical work flow and procedures?

Subject Matter Content	Instructor Guidance
(4) Certain categories of employees are generally excluded from functional and craft units composed of rank and file employees. The theory behind the exclusion is that these classes of employees would be engaged in a conflict of interest if they were within the unit. Common exclusions are: (a) First-line supervisors and other management officials (b) Personnel and labor-relations employees in other than a purely clerical capacity	**NOTE:** What kinds of exclusions are mandated in your jurisdiction?
(c) Employees auditing work of others (d) Confidential employees (e) Professional employees, unless they specifically vote for inclusion in a unit with other employees (f) Guards, unless they are in a unit composed solely of guards.	**NOTE:** Item (d) refers to those who have access to policy information on labor relations. **NOTE:** Are professional employees and guards accorded special status in your jurisdiction?

4. The final determination on the appropriateness is is generally made by the jurisdiction's labor relations authority, if one exists. If not, management, working with the union, decides if the unit is appropriate.
    a. How is unit determination handled in your jurisdiction?

NOTE: You may want to briefly chart out the unit determination process for your jurisdiction.

   b. Units may be determined by the labor relations authority in advance of the submission of a petition. By setting the number and types of units in advance, fragmentation is avoided. New York and Hawaii, for example, have taken this route.

5. How does the size and composition of the unit impact on management?
    a. Unit size and composition affects the scope of negotiations.
        (1) Management at the level of the unit can only negotiate on those items over which it has authority.
        (2) If the unit is very small and at a low level of authority, the number of items on the bargaining table will be very small. The reverse is true of a very large unit dealing at a high level of management authority. Contrast these two situations:
        Situation A: If the teachers of a single school are in a unit, they would bargain only those issues within the authority of the school principal.
        Situation B: If all the teachers in a City are in a single city-wide unit, they will bargain all things within the authority of the local school board.
        (3) If there are many small units, management will bargain many separate contracts.
            (a) Cost of negotiator's time alone is a significant item.
            (b) Can create different working conditions for employees who work side-by-side but who are in different units.

(c) If there are many small units, the unions will "whipsaw" management. Example: Unit X gains, in negotiations, a $ .02 per hour wage increase. Union Y wants $ .03 per hour for its members to maintain comparability with Unit X.

(d) The existence of many separate contracts can create many problems for management in administering them.

(e) In some cases, management has gone to multi-unit bargaining to counteract the problems listed above.

NOTE: Multi-unit bargaining is defined as bargaining a single contract to cover several similar bargaining units within an agency.

b. The number of units, their size and composition can impact on the effectiveness of the labor-management relationship.

(1) Problems in contract administration
(2) Consulting/negotiating same management decision with several unions
(3) Lack of real management authority at the level of the unit to deal with employee problems

E. The Election Stage

OBJECTIVE: To inform managers of what is required at this stage of the collective bargaining process.

1. The scene at the election stage

NOTE: Further information on the election stage is contained in Unit III.

a. Labor organization has obtained order for election

b. Election campaign being conducted

c. Election agreement negotiated

d. Election conducted

2. What is required?

a. Election agreement

b. Secret ballot election (Key)

c. Election by majority of ballots cast (Key)

d. Management – get out the vote campaign (Key)

NOTE: The percentage necessary to win an election in your jurisdiction may be different, or you may have a provision for recognition after proof of majority status. Note this here.

Subject Matter Content | **Instructor Guidance**

3. The Election Process

   a. The importance of an election agreement

      (1) States place and hours of polling
      (2) Names observers for both sides
      (3) Sets up procedure for challenging ballots (or voters)
      (4) Provides orderly release of employees to vote.

   b. The election must be by secret ballot

      (1) If there is no labor relations authority in the jurisdiction, the parties may ask a neutral third party to conduct the election.

   c. What does it take to win an election?

      (1) The ballot will give employees the chance to choose between the union(s) and no union. If professional employees are accorded separate treatment they will choose between union(s) and no union and also whether they want to be in a unit with other types of employees or in a separate unit.
      (2) The number of votes required to win an election varies from jurisdiction to jurisdiction. It may be a simple majority of ballots cast, a majority of the employees in the unit, or there may be a requirement that a certain number of employees vote.

NOTE: How is the winner of an election determined in your jurisdiction?

   d. Management should conduct a get-out-the vote campaign

      (1) Some jurisdictions require management neutrality at the election stage as at the organizing stage.

NOTE: Is management neutrality required in your jurisdiction?

      (2) Even if management is not required to be neutral, management should avoid certain actions.

NOTE: These are Unfair Labor Practices in the federal sector.

         (a) Coercing or threatening employees to get them to vote no union
         (b) Forcing employees to vote (escorting them to the polls)

    - (c) Having supervisors or managers physically present at the polls
    - (d) Any action which could be construed as "tainting" the results of an election.
  - (3) It is in management's best interest to have as many employees as possible vote. A large vote gives a truer reflection of employee desires.
  - (4) What should management do?
    - (a) Make sure all employees are apprised of their rights — to join or not to join, to vote or not to vote. Additionally make sure employees understand the ramifications of exclusivity — that the union represents all employees in the unit, regardless of their membership.
    - (b) Where laws permit union or agency shop clauses, the implications of such clauses should be communicated to the employees.
    - (c) Other suggested management actions
      - i. Publicize date and place of election
      - ii. Put polling booth in a prominent place
      - iii. Advise supervisors to give employees time to vote.
      - iv. Schedule election for payday — more employees are at work.

H. The Certification Stage

1. The scene at the certification stage

- a. A single labor organization is certified as the exclusive bargaining agent of all employees in the bargaining unit.
  - (1) The labor organization is the sole agent authorized to negotiate with management on issues within the scope of bargaining.
  - (2) The labor organization represents all employees in the unit whether or not they are members of the organization.

Subject Matter Content	Instructor Guidance

2. What is required of management at this stage?
    a. Understand the ramifications of exclusivity (Key)
    b. Bargain in good faith with the labor organization (Key)
    c. Understand labor organization, employee, and management rights and responsibilities.

3. The meaning of exclusivity
    a. For management
        (1) Must deal through exclusive labor organization on any matter within scope of bargaining
            (a) Right to deal with individual employees may be limited
            (b) Right to deal with other interest groups (minority groups, etc.) on matters within the scope of bargaining is limited (can confer but not negotiate)
        (2) Bilateralism as opposed to unilateralism
        (3) Must negotiate with exclusive labor organization, in the absence of a contract, on all matters within the scope of bargaining
            (a) Changes in personnel policies and practices and matters affecting working conditions
            (b) Changes in past practices
        (4) On demand from union, negotiate in good faith on an agreement or reach an impasse.
        (5) Management may also initiate request for bargaining.
    b. For the labor organization
        (1) Must represent all employees in unit
            (a) Whether members or not
            (b) Right to make determination on validity of grievances

Subject Matter Content	Instructor Guidance

c. For employees
   (1) Labor organization negotiates on behalf of all employees
   (2) All employees are bound by a negotiated agreement
   (3) All employees may be represented by a labor organization or employees may retain right of self-representation.

4. What does the good faith requirement mean at this stage of the collective bargaining process?

a. Without a contract, management's duty to negotiate and consult may seem vague.

b. Basically management has the duty to negotiate any proposed action which will impact on any matter within the scope of bargaining.

c. If an employee desires representation, he is entitled to it.

d. Management must meet at reasonable times and reasonable places to negotiate on a give-and-take basis on matters appropriate to the scope of bargaining. Neither side is required to make a concession.

e. Management must not negotiate with any other group, nor circumvent the exclusive representative in dealing with employees.

5. Decertification of an Exclusive Representative

a. Many jurisdictions provide for the decertification of a labor organization by another union or a group of "no union" employees. In some cases, management can initiate decertification if there is a good faith doubt that the organization no longer represents a majority of employees.

NOTE: What provisions exist in your jurisdiction for the decertification of an exclusive representative?

b. The petition and election requirements are usually the same as for the initial recognition. A show of interest petition and a secret ballot election are required.

Subject Matter Content	Instructor Guidance
c. In jurisdictions where labor laws exist, there are varying types of bars to new elections (1) Election bar: if a petitioning union loses an election, there will be no new election for a period of time, generally 6 months to a year. (2) Certification bar: if a union has been certified, but there is no contract, the union is protected from challenge by another union or decertification for a period of time, generally one year. (3) Contract bar: union is free from challenge for the life of the contract. There will be an open period toward the last few months, generally lasting 30 days, when other unions can challenge or decertification actions can be filed. (4) The purpose of bars is to give stability to the labor-management relationship.	**NOTE:** What kind of bars are provided in your jurisdiction?
IX. THE PREPARATION FOR NEGOTIATIONS STAGE **A. The scene at the bargaining preparation stage of the process** 1. Management prepares to negotiate a collective bargaining agreement with the exclusive labor organization 2. A "give and take" process, bilateralism **B. What is required?** 1. Positive, activistic management approach. (Key) 2. Selection of a management negotiating team. (Key) 3. Delegation of authority to negotiate and reach agreement. (Key) 4. Anticipate union demands 5. Prepare management proposals and counterproposals. (Key)	**OBJECTIVE:** To inform managers of what is required of them at this stage of the collective bargaining process.

Subject Matter Content	Instructor Guidance

C. Purpose of negotiations

1. Resolution of conflict between management and employees
2. Collective bargaining as a give and take process
3. Permits employee participation in determination of working conditions.

D. Requirement of "Good Faith"

1. Meet at reasonable times and places to confer on a give and take basis on issues within the scope of bargaining. Neither side is obligated to make a concession; however, although they may be unable to do so, both sides must have intent to reach an agreement.

E. Role of management in preparations

1. Role of line personnel
    a. Executives
    b. Middle managers
    c. Supervisors
2. Role of staff personnel
    a. Personnel — labor relations
    b. Fiscal and legal staff

F. Management attitude and approach

1. Preservation of management rights
    a. Ability to manage
2. Positive, activistic approach
    a. Management makes proposals

Subject Matter Content	Instructor Guidance
b. Making the labor relations program work to management's advantage, its ability to accomplish its mission	
G. Collective bargaining process and management	
1. An extension of principles of representative democracy	
2. Forces an opening of communications	
a. Intra-management	
b. Inter-management and employees	
3. Provides a mechanism for problem resolution	
4. Labor organization shares responsibility for problem resolution	
H. Necessary contract clauses	
1. Management rights	
2. Negotiated Grievance Procedure	
I. Costs and productivity	
1. Estimating costs of all proposals	
a. Direct costs	
b. Indirect costs	
2. Productivity	
a. Management must look at (1) Effectiveness (2) Efficiency (3) Economy	
b. Management must look at employee well-being (1) Increased morale (2) Improved health and safety	

Subject Matter Content	Instructor Guidance
X. THE CONTRACT NEGOTIATION STAGE	**OBJECTIVE:** To inform managers of what is required of them at this stage of the collective bargaining process.
A. The scene at contract negotiations stage of the process	
1. Management and the exclusive bargaining agent negotiate an agreement	
B. What is required?	
1. Negotiate in "good faith" (Key)	
2. Understand management rights (Key)	
3. Productivity and costs (Key)	
C. "Good faith" in negotiations	
1. Desire to reach agreement	
2. Reasonable times and places	
3. Must negotiate but no concessions required	
D. Scope of bargaining	**NOTE:** What is the scope of bargaining in your jurisdiction.
1. Personnel policies and practices and matters affecting working conditions, including wages, hours, and other terms of employment	
2. Limitations on the scope of bargaining	
a. Non-negotiable items (1) Management rights (2) Mission and budget of the department	
b. Does your state labor relations authority provide for appeals on the negotiability of an item?	
E. Authority of management negotiating team	
1. Must have sufficient authority to reach agreement with exclusive labor organization	
F. Negotiate a contract that is viable	

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TRAINING PLAN

COURSE TITLE: COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE, COUNTY & LOCAL)

Page

UNIT NO.

UNIT TITLE: The Collective Bargaining Process: An Overview

Subject Matter Content	Instructor Guidance
G. Negotiate, bearing in mind	
1. Employee and unit productivity	
2. Costs of provisions in agreement	
H. Management's ability to manage	
1. Effect on line personnel	
a. Ability to manage	
b. Ability to carry out mission	
2. Effect on staff personnel	
a. Ability to administer and maintain an effective labor-management program	
I. Management approval of negotiated contract	
J. Union ratification of contract	
1. By union members in unit	
K. In some jurisdictions, state legislature must approve parts of contract, particularly if they're cost items.	
L. Signing Ceremony	
1. Publicity	
2. News Conference	
a. Public commitment to administration of agreement in the public interest	
XI. THE CONTRACT ADMINISTRATION STAGE	**OBJECTIVE:** To inform manag of what is required of them at th stage of the collective bargainin process.
A. The scene at the contract administration stage	
1. A labor contract has been negotiated	
a. Management administers	
b. The exclusive labor organization polices	

TRAINING PLAN

COURSE TITLE: COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE, COUNTY & LOCAL)

UNIT NO. I

UNIT TITLE: The Collective Bargaining Process: An Overview

Subject Matter Content

B. What is required?

1. Uniform and consistent management interpretation and application (Key)
2. Knowledge of grievance procedure (Key)
    a. Effect on management
    b. Knowledge of arbitration process
3. Strong "management team"
    a. Intra-management communication

C. Management administers contract

1. Importance of uniform administration
2. Importance of intra-management communication

D: Exclusive labor organization polices contract

1. Policing through the negotiated grievance procedure or through consultation between management and employee representative

E. The negotiated grievance procedure

1. Interpretation and application of contract
2. Makes contract living document
3. Arbitration of grievances
    a. Arbitration elected by only union or management

F. The "management team"

1. The role of the supervisor, need for training
2. Intra-management relations

Instructor Guidance

Reference Materials:

"The Emergence of Public Sector Collective Bargaining" (RN I-1)

"A Glossary of Collective Bargaining Terms" (RN I-2)

"The Collective Bargaining Process" (RN I-3)

"The Impact of Collective Bargaining on Management" (RN I-4)

"Guidelines for Government Management in the Organization and Management of Labor Relations" (RN I-5)

"A Management Labor Relations Philosophy" (RN I-6)

"A Management Labor Relations Policy" (RN I-7)

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TRAINING PLAN

COURSE TITLE: COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE & LOCAL)

UNIT TITLE: Why & How Workers Join Unions

UNIT: II

TOTAL TIME: ½ day

METHODS:
participatory lecture;
case discussions

TRAINING AIDS:
cases; films: Inheritance,
I Am Somebody

Subject Matter Content

I. ABOUT PUBLIC SECTOR UNIONISM

A. Recent growth of public sector unions 1960 - 1973

1. Growth until 1960's was gradual
2. Increased rapidly after 1960: membership and representation
3. State and local government
    - a. American Federation of State, County and Municipal Employees (AFSCME)
        - (1) Membership: 210,000 to 700,000
        - (2) Represents over 1.3 million
    - b. American Federation of Teachers
        - (1) Membership: 56,000 to 420,000
    - c. National Education Association (Ind.)
        - (1) Membership: 670,000 (approx) to 1.5 million
    - d. Other independents:
        - (1) Assembly of Government Employee Associations
            - (a) Membership: 300,000 to 700,000
            - (b) Represents 800,000
        - (2) Individual state and local associations
            - (a) California State Employees Assn.
                - i. Membership: 85,000 to 113,000
                - ii. Represents 125,000
            - (b) New York Civil Service Employees Assn.
                - i. Membership: 75,000 to 190,000
                - ii. Represents 250,000

Instructor Guidance

OBJECTIVE: To demonstrate that, while unions and associations have existed in the public sector for many years, most of their growth has come in the past 13 years, and thus, why it is important to ask why employees have joined in such numbers recently.

NOTE: Instructor may want to plug in here membership and representation data for the particular jurisdiction(s) and unions or associations involved.

Reference Material:
Emergence of Public Sector Collective Bargaining, RNI-1

Profiles of Public Sector Unions, RNII-1

NOTE: AGE is an affiliation of independent public employee associations for the purpose of national lobbying.

Sources:
Bureau of Labor Statistics & Government Employee Relations Report *(Bureau of National Affairs)*

COURSE TITLE: **COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE AND LOCAL)**

UNIT NO. II

UNIT TITLE: **Why & How Workers Join Workers**

Subject Matter Content	Instructor Guidance

4. **Federal Government** ***(individual unions)***

   a. American Federation of Government Employees (AFGE)
      - (1) Membership: 70,000 to 300,000
      - (2) Represents 625,000

   b. National Federation of Federal Employees (NFFE)
      - (1) Membership: 30,000 to 85,000
      - (2) Represents 135,000

   c. National Association of Government Employees (NAGE)
      - (1) Membership: 20,000 to 40,000
      - (2) Represents 76,000

NOTE: The term "union" is used generically to include employee associations as well. Where there is a basic difference in orientation in the associations with which you deal, this should be discussed.

5. **Federal Government** ***(overall statistics)***

   a. Employees represented (non-Postal):
      - (1) 19,000 (1961) to 1,086,000 (1973)
      - (2) 47% of white-collar employees (1973)
      - (3) 87% of blue-collar employees (1973)

   b. Exclusive bargaining units
      - (1) 2 (1961) to 3,486 (1973)

NOTE: The point here is that you're not alone. The growth of public sector unionism reaches across all jurisdictions.

Reference: Federal statistics from CSC Report.

6. **Comparative representation: public and private sectors**

   a. Overall by sector:
      - (1) Private sector - 24% represented
      - (2) Public sector - 35% represented
      - (3) Federal sector - 56% represented excluding Postal
        - 65% represented including Postal

   b. White collar representation
      - (1) Private sector - 7%
      - (2) Federal sector - 47%

Summary

1. Two questions:
    a. Why do public employees join unions?
    b. Why have they joined so rapidly recently?
2. Turn to these questions now

B. Basic reasons why workers join unions

1. Begin to answer by showing a film on labor history, "The Inheritance," an overview of private sector labor relations from 1900 to early 1960's.
    a. Produced by Amalgamated Clothing Workers of America on the union's 50th Anniversary: No pretense at being an "objective" history.
    b. But look at it as an attempt by labor movement to explain itself to its own members
        (1) Insight into what role unions see themselves playing
        (2) Insight into what reasons employees had for joining
    c. Look for two things while watching:
        (1) Why did employees join?
        (2) Are same reasons relevant to public sector?
2. Reasons for joining noted in film:
    a. Wages
    b. Working conditions
    c. Management practices
        (1) Arbitrary, unfair
        (2) Unresponsive, inaccessible
    d. Union-sponsored benefits

INSTRUCTOR GUIDANCE: These questions are meant to be rhetorical. They are discussed later.

Reference Materials

Overview of the History of the American Labor Movement, RNII-2

Structure & Function of the American Labor Movement, RNII-3

NOTE: The "Inheritance" can be purchased from
Harold Mayer Production
155 W. 72nd St.
New York, NY 10023
for $125.00. In addition to the rental sources listed in the cover letter, the Inheritance can be obtained from the Anti-Defamation League of B'nai B'rith.

INSTRUCTOR GUIDANCE: Tell participants to be looking for answers to these questions as they view the film.

INSTRUCTOR GUIDANCE: Show the film, then either ask participants for reasons noted in the film or list them yourself on a chalk board or flip-chart. Then ask if the same reasons are relevant to the public sector. The points noted in this section of the outline are for discussion, rather than lecture.

3. Are same reasons relevant to public sector?
    - a. Wages
        - (1) Aren't our wages pretty good?
        - (2) Particularly low in low-skilled, local government jobs
        - (3) Inflation and tax-payer resistence to increases
        - (4) But can unions do anything about wages?
            - (a) Negotiable in most states where negotiations occur.
            - (b) In Federal sector
                - i. Unions have always been active lobbyists
                - ii. Unions participate on advisory panels which recommend increases to President
    - b. Working conditions
        - (1) Governments haven't paid as much attention to working conditions as private employers
        - (2) Exposure to the elements in many public jobs makes issue particularly important
        - (3) Important to many white-collar/professional employees
            - (a) Teachers: class size, classroom facilities
            - (b) Police: men per squad car
        - (4) Some of major bargaining disputes have been over such issues

NOTE: Is any of this relevant to your jurisdiction?

NOTE: This is an example of union involvement in areas traditionally regarded as being outside the scope of bargaining.

- c. Management practices
    - (1) Arbitrary/unfair:
        - (a) One of earliest functions of public sector unions was to combat political favoritism
        - (b) Appeals and grievance systems are often confusing and lack credibility with the employees
    - (2) Unresponsive/inaccessible:
        - (a) Especially important in large government bureaucracies
            - i. Geographic dispersion
            - ii. Authority to change/set policies may not rest at local level

Subject Matter Content	Instructor Guidance

(b) Even at lowest level, often difficult to tell what employees want or are concerned about

  i. Exercise: "What Workers Want Most From Their Jobs"
    - Designed by researchers at University of Wisconsin - late 60's
    - Asked workers in private sector manufacturing plants to rank ten factors in order of importance
    - Asked foremen from same plants how they thought their workers would rank the factors
    - Foremen's responses very different from those of employees

  ii. Points to stress:
    - Not that this is what workers want - will obviously vary a lot
    - Not that class participants don't know what employees in their agencies want
    - But can't be sure:
      - we sometimes sterotype employees inaccurately
      - there is no system to ask employees "what do you want?"

(c) Unions provide a way of "catching management's attention"

  i. By bargaining, consulting
  ii. By filing grievances and appeals
  iii. By lobbying

d. Union-sponsored benefits

  (1) Most public sector unions have health, life insurance plans
  (2) Many offer recreation, travel, cultural programs
  (3) Scholarships for children

TEACHING MATERIAL:

1. Quiz - "What Do Workers Want Most From Their Jobs?", CMII-1

INSTRUCTOR GUIDANCE:
Hand out quiz, CMII-1, and have participants rank the ten factors as they think employees in their department would respond. Then compare responses, first to the foremen's responses, then to both the foremen's and the worker's *(on the board, flip chart, or transparencies)*.

	W	F
1.	3	9
2.	6	5
3.	5	1
4.	4	2
5.	8	6
6.	10	7
7.	1	8
8.	2	10
9.	9	4
10.	7	3

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TRAINING PLAN

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UNIT NO. II

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Subject Matter Content | **Instructor Guidance**

4. **We've been discussing the "traditional" functions of public sector unions — ones unions have always been performing.**
    a. We need to look for other reasons to explain "Why now?"

INSTRUCTOR GUIDANCE: Now ask participants for answers to this question. Points listed in Section C can be taken in any order. What about the growth figures for your jurisdiction?

Source:
Bureau of Census, Statistical, Abstract, 1971.

C. Explanations for recent growth in public sector unions

1. **Growth in public sector itself**
    a. Statistics: growth in workforce (1960 - 1970)
        (1) Local governments: up 46%
        (2) State governments: up 71%
        (3) Federal government: up 23%
        (4) Private sector: up 15%
    b. Rapid expansion has caused dislocation, "growing pains" *(inadequate facilities, poorly-planned personnel services, etc.)*
    c. Bargaining power *(supply/demand)* of public employees increases
    d. Different attitudes among new employees towards unions
        (1) Many had been union members in private sector
        (2) Some had parents who had been union members

2. **Effect of other social movements**
    a. Civil Rights Movement
        (1) Legitimized militent tactics and civil disobedience for many — union tactics made to seem less radical
        (2) Particularly strong impact on low-skilled, low-paid (often black or other minority) employees — one reason why sanitation departments so heavily hit
        (3) Strong labor movement - civil rights movement ties — public sector unions have given especially strong support to civil rights issues (in bargaining, in politics)

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(4) Civil rights movement also has had indirect effect: increased pressure on public sector for services, against discrimination – effect on teachers, police, fire

b. Public resistance to higher taxes

(1) Unions have argued that public employees must fight for increased benefits
(2) Unions encourage public support for cost of government

3. **"Snowball Effect"**

INSTRUCTOR GUIDANCE: Note that "The Inheritance" refers to advent of the CIO, but does not indicate that the AFL was spurred to organize because of the CIO threat. (The Amalgamated Clothing Workers was a CIO union.)

a. Rapid unionization has "fed on itself"

b. Seeing others win wage and benefit increases induces others to join

c. Competition among unions spurs all to increased effort

(1) Similar to CIO challenge to AFL in 1930's *(noted in film)* – one of greatest periods of union growth
(2) Public sector has seen bitter fights between:
  (a) AFL-CIO unions and independents
  (b) Exclusively public sector unions and unions with base in private sector (Teamsters, Metal Trades Councils, Laborers, Service Employees)
  (c) American Federation of Teachers and National Education Association
(3) Threat of losing "territory" has driven many employee associations to change their orientation from strictly professional organizations to include representational activities.
  (a) NEA – teachers
  (b) American Nurses Association – nurses
  (c) NYCSEA – New York Civil Service employees

4. **Laws and Executive Orders**

INSTRUCTOR GUIDANCE: Note that "The Inheritance" refers to the Wagner Act but does not stress its importance.

a. Largest growth in private sector came after National Labor Relations Act (Wagner Act) in 1935

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b. 1950 - 1960, much growth in union organization in the public sector took place due to ordinances and statutes which made voluntary dues check-off available.	
c. Earliest public sector collective bargaining laws and executive orders: (1) New York City — Mayor Wagner EO — 1958 (2) Wisconsin — first statute — 1959 (3) President Kennedy — EO 10988 — 1962	Has a collective bargaining law been passed in your jurisdiction? Did it lead to growth of union(s)?
d. A majority of states now have laws giving employees the right to organize and either negotiate contracts or "meet and confer" with their employers	
e. Passage of such laws has been both cause and effect of increased unionization: (1) Cause — established a **climate** for unionization: (a) Enunciated rights to organize and bargain: gave respectability to collective bargaining (b) Set up machinery for protecting rights (unfair labor practice machinery) (c) Set up machinery for recognizing unions (unit determination and election machinery) (d) Gave unions something concrete to aim for, gave them right to negotiate binding agreements. (2) Effect: (a) Providing orderly procedures for resolving disputes and protecting rights can eliminate much of the disruption that occurs when no machinery exists. (b) Growth of public unions has given them political strength.	
f. Public sector unionism might have come without passage of check-off and collective bargaining laws, but not with the same speed.	

Subject Matter Content	Instructor Guidance
D. "I Am Somebody." This film can serve, as a transition between the first and second sections of this unit.	**NOTE:** Our point in showing the film here is to indicate some of the problems of public sector management pulling all the stops in fighting union organizing efforts. It also indicates rather powerfully, why some public employees join unions.

1. It portrays public sector *(hospital)* strike for recognition, wage increases, reinstatement of discharged workers, end to discrimination.

2. Produced by American Foundation on Non-Violence.

  a. 30 minutes

  b. Can be purchased from Contempory Films, 330 W. 42nd Street, N.Y., N.Y. 10036, for $360.

3. Obstacles which confronted the union in the film.

  a. The anti-union authority structure in Charleston and in South Carolina.

  b. Injunction issued by the courts.

  c. Use of police and national guard to quell civil disobedience.

  d. Hostile attitude of the white population and other segments of the trade union movement.

  e. Lack of union strike funds.

  f. Loss of personal income of the striking workers and boycott of local merchants.

  g. Difficulties associated with organizing a new Local, instilling a sense of unity among members, and obtaining necessary outside assistance and cooperation.

4. Questions to ask participants.

  a. What techniques were used by the striking hospital workers to ensure success?

  b. Would the same strike strategy or techniques used by the hospital workers be applicable in your department/jurisdiction?

  c. Why would the civil rights movement and the labor movement join arms? What tactics, methods, or goals do they have in common?

d. What was the prevailing spirit or mood of the striking hospital workers?

e. What seems to be the message of the film?

f. What might management have done to prevent or ameliorate the strike?

g. What were the telling union pressure-tactics during the strike?

5. Synopsis of Film

a. Basic issue behind the strike was discrimination. Black workers were paid less than white workers for doing the same work. There were separate pay scales for black and white workers.

b. Depicts 400 hospital workers at the South Carolina Medical College who formed Local 1199b of the Drug and Hospital Union.

c. Following formation of the local, the Medical College discharged 12 workers.

d. Union demands centered on wage increases, recognition, and reinstatement of the 12 discharged workers.

e. The strike was settled because HEW threatened to withdraw federal funds under the Hill-Burton Act for hospitals under construction.

II. UNION ORGANIZING & MANAGEMENT RIGHTS

OBJECTIVE: To give to participants an understanding of what management can and can't do during the union organizing campaign.

A. Ground rules in a union organizing campaign

1. Local or state laws which prohibit organizing

a. Laws which prohibit organizing are unconstitutional as abridgment of freedom of speech

b. Laws which require issuance of a license to organize are constitutional.

Subject Matter Content

2. Distribution and solicitation

   a. Distribution — handing out leaflets: primarily an informative activity

   b. Solicitation — the practice or instance of approaching with a request or urging another to take a certain action; seeking a specific action from another person such as signing a union designation or membership card.

3. Distribution and solicitation by outside organizers

   a. Public property —
      (1) Free to hand out literature and solicit workers
      (2) Public property, defined: streets, sidewalks, parking lot dedicated to public use

   b. Private property — law of trespass
      (1) Courts have taken narrow view of outside organizer's rights on employer's property
      (2) Employer may refuse to permit outsiders to solicit or distribute
      (3) Refusal to permit distribution and solicitation by outsiders on private property must be uniformly applicable to all outsiders.

4. Distribution and solicitation by employees *(organizing by employees)*

   a. General rules, applicable if restrictions are uniformily applied
      (1) A rule that prohibits distribution in non-**work areas on employees' time** is considered "interference" and may not be allowed to stand.
      (2) A rule that prohibits **distribution** in **working areas** on **employees' time is valid**, if uniformily applied.
      (3) A rule prohibiting **distribution and solicitation** on **working time** is valid.
      (4) Employees may wear unions buttons
         (a) Possible exception hospital operating rooms, outsized buttons, etc. which might affect safety or discipline.

Instructor Guidance

Instructor Guidance: Several cases are included. Some or all of them can be used to make the points.

NOTE: If you have a public sector collective bargaining law, what does it say about employee and union rights and management responsibilities during organizing?

Reference Material
Management Response to the Union Organizing Campaign, **RNII-4**

Cases
1- Organizing Situation: Proposed Management Response, **CMII-2**
2- Organizing Situation: Enough Is Enough, **CMII-3**
3- Organizing Situation: Where Can the Union Organize?, **CMII-4**
4- Organizing Situation: A Marginal Employee, **CMII-5**

NOTE: Key these to the specific law in your jurisdiction.

Subject Matter Content | **Instructor Guidance**

5. Union authorization cards

   a. Authorization card – signifies desire of employee to be represented by union in collective bargaining. It may be used as:
      (1) Proof of majority representation to demand recognition from an employer
      (2) Evidence of a necessary observing of interest in an appropriate unit to support a representation petition

   b. Membership card – an application for union membership and, usually, an authorization to represent

   c. Checkoff card – Usually a combined representation authorization, membership and authorization for employer to deduct union dues.

   d. General rules on use of authorization cards:
      (1) Cards will be introduced at public hearing; not considered confidential
      (2) Cards must be fresh or timely; not more than one year old
      (3) Cards must be legibly signed
      (4) Signatures must be authentic

6. **Union communication with employer, during organizing campaign**

   a. Unions sometimes notify management of an organizing campaign to:
      (1) Inform employer of organizing campaign
      (2) Warn against unfair labor practices
      (3) List names of "employee" organizers

   b. Purpose of such letters is to inhibit commission of unfair labor practices

B. The Organizing Campaign and Unfair Labor Practices by Management

1. **General rule: The main goal of a union is to win recognition and bargaining rights, not to win an unfair labor practice case.**

NOTE: The following areas are generally unfair labor practices under statutes where such provisions exist. In the absence of specific legislation, the instructor should communicate public policy on these

Subject Matter Content

2. Interference, Restraint and Coercion is generally prohibited

   a. Distribution and solicitation. General rules as set out earlier: An employer may control employee organizing activity on work time and in work places.

   b. Surveillance and interrogation.

      (1) Employees are protected from such management actions.

         (a) Spying on employees organizing
         (b) Taking pictures of employees organizing
         (c) Tapping telephones
         (d) Sending supervisors to union meetings
         (e) Inducing a supervisor or employee to provide list of union activists.

      (2) Interrogation may be acceptable when there is a need:

         (a) to determine whether union actually represents a majority.
         (b) employees questioned are assured against reprisals, and
         (c) there is no background of employer hostility to unions.

C. Threats, Promises and Material Misrepresentations.

1. General rule: mere opinion, views or argument, without threat or promise, express or implied, is not prohibited unless legislation requires neutrality.

2. Types of conduct, threats, promises, that are generally not allowed

   a. There will be no further overtime
   b. Employers will take away benefits
   c. Employer will get rid of union activists
   d. Firing pro-union supervisors
   e. Showing anti-union movies

Instructor Guidance

areas. Where such activities are allowed, discuss the advisability of such conduct, especially in the light of "I Am Somebody" and other cases such as the Memphis sanitation strike where management resistance only served to intensify union sentiment.

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f. Announcement of benefits during campaign

3. Domination or Support of Union

   a. General rule: employer should refrain from dominating, supporting, sponsoring, controlling or otherwise assisting a labor organization, or favoring one labor organization over another.

   b. Activities such as the following have been considered domination or support
      - (1) Employer soliciting union applications or checkoff cards in favor of a union during an organizing campaign
      - (2) Employer encouraging supervisors to participate in union affairs
      - (3) Employer suggests formation of an independent union and helps get it started
      - (4) Employer recognizes and bargains with a minority union
      - (5) Employer recognizes one union where two are competing
      - (6) Employer bargains with an incumbent union where there is a real question concerning representation.

4. Discrimination in Employment to Encourage or Discourage Union Membership.

   a. General rule: an employer should refrain from pursuing any policy or program which encourages or discourages union membership with regard to hiring, tenure, promotion or other conditions of employment.

   b. Burden of proof on such a charge as this rests with the party making the charge.

Subject Matter Content	Instructor Guidance
c. Types of activity which have been found in violation of this rule: (1) Employer locking out employees during an organizing campaign (2) Employer threatening to close up if union gets in (3) Employer closing one facility to discourage union in another. (4) Employer laying off employees and contracting work out. (5) Employer firing union activist for no legitimate reason.	
5. Discharge or otherwise discipline an employee for filing a complaint or testifying in a labor matter.	
a. General rule: an employer is prohibited from discharging or otherwise disciplining an employee because the employee has filed a labor complaint or testified on a complaint.	
b. Types of activity which have been found in violation of this prohibitions are: (1) Demotion or discharge for failure to withdraw an unfair labor practice charge. (2) Demotion or discharge for testifying in an unfair labor practice case. (3) Demotion or discharge of a supervisor who has testified.	
6. Refusal to bargain or negotiate	
a. General rule: an employer is prohibited from refusing to bargain or negotiate in good faith with a union representing a majority	
b. Voluntary recognition: Under NLRA and some state laws, employer may voluntarily recognize a union upon presentation of proof that union represents a majority of employees in the appropriate bargaining unit. ***(NOTE: Some state public sector laws and Federal Executive Order 11491, as amended, require an election for certification.)***	**NOTE:** What is the requirement in your jurisidction?
(1) Voluntary recognition requires proof of majority, usually done by third party	

Subject Matter Content | **Instructor Guidance**

D. Recognition ordered in spite of an election loss.
(NLRA – action by NLRB only)

1. Under the Joy Silk Mills and Bernel Foam doctrines, the NLRB may order an employer to recognize a union, in spite of the fact that the union lost an election, where:
   - a. The union had previously shown proof of majority status, and the employer had refused to recognize the union voluntarily; and
   - b. The employer committed unfair labor practices during the conduct of the subsequent election campaign.
2. In such a case, the employer's initial refusal to recognize the union would be found, in light of subsequent events, to have been in bad faith.

E. Unfair Labor Practices by a Union

1. Interfere, restrain or coerce employees in exercise of employees' rights under law or order *(or to bring pressure on employer to do so)*.
   - a. Prohibited union activities in an organizational campaign are:
     - (1) Violence
     - (2) Threats of violence
     - (3) Mass picketing in an organizing campaign
     - (4) Deliberate deception to secure union cards
     - (5) Threats to use union's power to cause economic harm to employees who refuse to cooperate

NOTE: These are the common unfair labor practices contained in pieces of legislation modeled on the NLRA. In the absence of specific prohibitions, of course, there is no way to enforce such prohibitions.

2. Union is also prohibited from interfering or coercing an employer in the exercise of his rights under the law or order.
   - a. Union activity to force an employer to get rid of an employer representative

Examples:
New York State, Massachusetts

Subject Matter Content	Instructor Guidance

3. Strikes, boycotts, slowdowns, etc.

   a. Under some state laws and Executive Order 11491, as amended, engaging in a strike is an unfair labor practice and prohibited

   b. Under NLRA strikes are legal, but an unfair labor practice:

      (1) To force an employer or self-employed person to join a union;
      (2) To force an employer into an agreement not to handle goods of another employer *(hot cargo agreement);*
      (3) To force an employer to cease doing business with another employer;
      (4) To force recognition of an uncertified union
      (5) To force an employer to recognize and bargain with a union if another union is certified;
      (6) To force the assignment of work from one union to another *(jurisdictional dispute).*

   c. Picketing: National Labor Relations Act makes certain organizational and recognitional picketing an unfair labor practice

      (1) Where another union is lawfully recognized
      (2) Where a valid election has been held within a year
      (3) Where an election petition has not been filed within a reasonable time.

F. **Throughout the organizing stage - as in the other stages — management must continue to manage.**

Examples:
Massachusetts, Michigan

NOTE: What does the law say in your jurisdiction?

Reference Materials:

Emergence of Public Sector Collective Bargaining, RNI-1

Profiles of Public Sector Unions, RNII-1

Overview of the History of the American Labor Movement, RNII-2

Structure & Function of the American Labor Movement, RNII-3

Management Response to the Union Organizing Campaign, RNII-4

INSTRUCTOR GUIDANCE

FOR UNIT II CASES

The following is guidance for teaching the cases in the previous unit. You may use the cases either to introduce a point or to summarize points already made. The shorter cases are best used to introduce a point which is then reinforced by the instructor with material from the Instructor's Guide. In all cases, participants should work within the framework of your jurisdiction's law.

CM II - 2 "Organizing Situation: Proposed Management Response"

In discussing this case, your state collective bargaining statute, or lack of one, will govern many of the proposed management responses. If some management acts are discretionary in your jurisdiction, discuss what type of action is in management's best interest.

Following is general guidance on each "proposed management action":

1. Employees must be informed of their rights. Even if management is required to remain neutral, this statement allows management to inform employees of their rights without taking a partisan approach to the question of organization. Conclusion: a good management response.

2. The ability to stop solicitation and distribution on official time is generally well within management's rights. If such a statement is issued by management and management is required to be neutral, it should be phrased in a neutral way. Even if management is not required to be neutral, you should question whether it is in management's best interest to take a "hard-line" approach against organizing. Taken to extremes, such a management approach can serve to fuel an organizing campaign.

3. The feasibility of this response will depend, in large part, on your state law. In many jurisdictions, where management neutrality is required, management must treat the union like any other employee organization such as the credit union. If other organizations have been allowed the use of agency facilities, management cannot be neutral and still deny the union equal rights with other organizations. If there is no history of employee organizations using agency facilities, then management is generally not **required** to allow the union the use of facilities.

4. Again, rely heavily on the provisions of governing law in evaluating this response. In the private sector, such actions may be grounds for an unfair labor practice or for dismissing the results of an election. The National Labor Relations Board requires that elections be held under laboratory conditions. Such management actions as #4 could conceivably infringe on the parties' right to an untainted election.

5. Where management neutrality is required, "no union" groups have the same rights, and no more, than the organizing union(s). Once again, if neutrality is not required, management must weight the benefits of such actions as opposed to any counterproductive effect.

6. What does your state law say, if anything, about this? Wearing buttons and displaying insignia are generally regarded as expressions of free speech and, thus, a constitutional right. If wearing buttons, etc., is a health and safety hazard (they might get caught in a machine, for example) the wearing or displaying of them can be prohibited.

7. The key phrase here is "continue soliciting employee views." As an established management practice, this can continue during the organizing campaign because the union is not yet recognized as the exclusive representative.

8. Supervisors could only enforce the "no discussion" rule on work sites and on official time. If management neutrality is required, such enforcement must be done without taking a partisan stance.

9. Rely heavily on your state law in evaluating this proposal, taking special note of neutrality requirements. Again, management must evaluate the benefits of taking such a stance.

CM II - 3 "Organizing Situation: Enough is Enough"

Certainly management is responsible for the actions of its supervisors. An unfair labor practice charge is filed against management, not against an individual.

Smith did not maintain neutrality because he did not treat the "no union" group of employees equally with the union group.

Was management's action correct? Doubtless, management's attempt to maintain neutrality is sincere. However, rather than censure the individual supervisor, management might better have publicly reaffirmed its commitment to neutrality and stated that management neutrality will be strictly enforced. Remember, the remedy for an unfair labor practice is a return to the status quo, not a punitive action.

CM II - 4 "Organizing Situation: Where Can the Union Organize?"

Of course, your state law will govern here.

1. This is probably not an unfair labor practice:

   a. All unions treated alike
   b. Is a working area
   c. Non-employee representative; Management can, to some extent, control.

2. The union would argue that at lunch (non-work time) the work place is no longer a work place.

CM II - 5 "Organizing Situation: A Marginal Employee"

1. If you separate the employee for union activity, you have committed an unfair labor practice. You can legitimately stop his union activity on work time in work places, but separating him for it is illegal under most state laws.

2. As to the question of the employee, you can separate him for nonperformance other than the specific instance of union activity, if you have documented it for a period of time.

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TRAINING PLAN

COURSE TITLE: COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE & LOCAL)

UNIT TITLE: Petition, Election, and Recognition Stages

UNIT: III

TOTAL TIME: 4 hours
METHODS:
lecture, discussion, and case studies
TRAINING AIDS:
Handouts and Case Materials

Subject Matter Content

I. THE PETITION STAGE

A. Some Important Terms

1. Exclusive recognition means that the union is the sole *(exclusive)* representative of the employees in the unit vis-a-vis those matters subject to the collective bargaining process.

2. Bargaining unit means:

   a. A group of employees represented by a union for collective bargaining purposes.

   b. A group of employees recognized by an employer or group of employers, or designated by an authorized agency, as appropriate for representation by a union for purposes of collective bargaining.

   c. Appropriate bargaining unit means a bargaining unit which meets the legal requirements of excluded and included categories of employees prescribed by laws, ordinance or orders; or in the absence of law by negotiation between union and employer.

B. The Scene at the Petition Stage

1. The union(s) has achieved a significant showing of interest among employees. Interest may be indicated to the employer by:

   a. A signed petition

   b. Dues authorization cards

   c. Designation cards

Instructor Guidance

PURPOSE: The purpose of this unit is to discuss the petition, election, and recognition stages of the collective bargaining process. This unit should be tailored to the requirements of your jurisdiction. You may choose to include parts of the unit not strictly applicable for purposes of information.

NOTE: Other definitions may be found in "A Glossary of Collective Bargaining Terms," RN I-2.

OBJECTIVE: To give participants an understanding of what happens at the Petition Stage and of what management's responsibilities are.

Teaching Material:
"The Collective Bargaining Process," RN I-3, p. 3.

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UNIT NO. III

UNIT TITLE: Petition, Election, and Recognition Stages

Subject Matter Content	Instructor Guidance
2. By presenting management with the evidence of interest and support, the union hopes a. To obtain a recognition election *(or management recognition of majority status where this is allowed)* to determine if the union is the choice of the majority of employees in the unit as their exclusive representative. b. To enter into a collective bargaining relationship *(meet-and-confer in some states)* with management	**NOTE:** At this point, you may want to discuss the type(s) of labor-management relationships allowed in your jurisdiction. Cover all categories of employees *(teachers, state, and local)* if separate statutes exist.
3. A petition normally contains a. A description of the proposed bargaining unit, listing both inclusions and exclusions of employee categories, and the approximate total number of employees involved b. Statement that the labor organization has submitted to the employer a current roster of its officers, a copy of its constitution and bylaws and a statement of its objectives	
c. The "showing of interest" – generally 30% of the employees in the proposed unit, but the exact percentage varies from jurisdiction to jurisdiction	**NOTE:** Discuss your specific requirements here.
C. Unit Determination **1. After the petition is submitted to the proper authority, a determination on the appropriateness of the unit petitioned for must be made** **2. How are units determined?** a. National Labor Relations Board model *(private sector)* – Provides for voluntary recognition by employer if union presents majority showing of interest. If recognition is voluntary, the employer agrees to the unit proposed by the union. If the employer does not voluntarily recognize the union, NLRB agent holds hearings to determine, among other things the appropriateness of the unit petitioned for.	

b. Federal model *(Executive Order 11491, as amended)*

- (1) If union and employer agree that unit is appropriate
    - (a) Area Administrator for Assistant Secretary of Labor for Labor Management Relations *(A/SLMR)* receives petition and determines its legitimacy
    - (b) Regional Administrator for A/SLMR checks proposed unit for conformance with Executive Order requirements for units and A/SLMR decisions
    - (c) If unit is found to be appropriate Regional Administrator directs an election to be held
- (2) If union and Federal agency management disagree on appropriateness of unit:
    - (a) Area Administrator directs that a hearing be held
    - (b) On the basis of information gathered at the hearing, A/SLMR determines the appropriateness of the unit. If the petitioned - for unit is not found appropriate, the union must wait six (6) months before petitioning for any other unit comprising employees contained in the unit originally sought

c. Other Public sector models of unit determination

- (1) Units determined by Statute - for example, Hawaii's public sector labor law defines 10 appropriate state - wide units. Lines drawn by occupational groupings
- (2) Units determined by consent between employer and union *(example: Massachusetts)* Upon majority showing of interest, employer may grant exclusive recognition
- (3) Units determined by State employee relations board *(New York)* - after petition is submitted, board decides if petitioned - for unit or some other unit is appropriate.

NOTE: After giving brief overview of public sector models of unit determination, discuss in detail your jurisdiction's procedures.

(4) Units determined by employee desires *(Wisconsin Municipal Employees Law)* – Any group of employees who wish to be represented in a separate unit may be.

(5) In absence of State or local labor relations regulations, union and employer may negotiate recognition, unit size, and composition

3. Considerations in unit determination

a. Mandatory Criteria *(Exclusions)*

(1) Where state and/or local labor relations statutes exist, there are usually some mandatory criteria that must be met before the unit is considered appropriate. The most common of these criteria are exclusions from the unit:

(a) In the Federal government and many states, supervisors may not be in a unit with employees they supervise. They may be allowed to form separate associations or even bargaining units of supervisors.

NOTE: On each exclusion, discuss the requirement of your state/local law.

(b) Management officials, personnel officials, and labor relations officials are generally excluded from a unit of other employees. The Federal government excludes those employees who may deal with labor relations in a policy-making or operational aspect

(c) Professional employees are usually excluded unless they specifically vote for inclusion in a unit with other employees. Some general criteria for determining professional employees:

Are there any specific criteria for professionals in your jurisdiction?

i. Exercise of judgment and discretion
ii. Advanced training and education
iii. Work produced or result accomplished cannot be standardized

(d) Guards and other security personnel are generally excluded from units containing other employees. They may form separate units

Subject Matter Content | **Instructor Guidance**

b. Community of interest *(Private, Federal, and Public Sectors)*

   (1) A common criterion of a unit is that the employees in the unit have an identifiable community of interest

   (2) A community of interest may be indicated by

      (a) similarity of duties
      (b) similarity of wages and hours
      (c) similarity of fringe benefits
      (d) similarity of skills
      (e) common supervision
      (f) desires of employees

   (3) In private sector, community of interest is the sole criterion for unit determination

c. Efficiency of operations *(Federal sector and some states)*

   (1) In the Federal sector, a proposed unit must promote efficiency of agency operations

   (2) Specific criteria for efficiency of operations include:

      (a) Will promotions, transfers, or interchange occur outside the unit so as to adversely affect efficiency of operations?
      (b) Does the proposed unit fragment existing units?
      (c) How does the proposed unit conform to the organizational structure of the agency?

d. Effective dealings *(Federal sector and some states)*

   (1) In the Federal sector, a proposed unit must also promote effective dealings between management and the union.

   (2) Specific criteria for effective dealings include:

      (a) Will the proposed unit promote stability or instability of labor management relations?
      (b) Is there sufficient authority at the level of the unit to permit meaningful negotiations?
      (c) Is there sufficient authority at the level of the unit to permit settlement of grievances?

NOTE: After discussing the "efficiency of operations" and "effectiveness of dealings" criteria, briefly discuss if these would be viable criteria in your jurisdiction. For example, in the private sector, the scope of bargaining *(re. 2a)* is not affected by the level of dealings.

(d) Will the unit fragment operations so that management is required to negotiate with many separate groups on the same issues?
  - i. conditions and benefits
  - ii. grievance procedure
  - iii. reduction in force and promotion policies

e. How are criteria applied in the public sector?

(1) Many jurisdictions rely on proof of common interest and employee desires as the only criteria for an appropriate unit *(Wisconsin Municipal Employees Law)*

(2) Some states have tried to prevent many small units and the resulting fragmentation of bargaining by delineating the bargaining units in their labor law statutes. *(Hawaii)*

NOTE: Discuss your unit determining criteria here. Also discuss advantages, disadvantages of small units, large units.

f. Types of units

(1) Craft – contains all members of a recognized, skilled craft, such as plumbers, machinists, etc.

  (a) Advantages: Employees have definite commonality of interest and may desire to remain separate from other "unskilled" workers

  (b) Disadvantages: May be very small, cause problems of fragmentation, and wage settlements may force other wages up through whipsawing.

(2) Plant or Installation Unit – Includes all employees of a plant or installation *(with normal exclusions)* regardless of job classification *(example: county hospital)*

  (a) Advantages: Usually will allow management to negotiate only one contract, tends to promote effective dealings more than several smaller units.

Subject Matter Content | **Instructor Guidance**

(b) Disadvantages: (1) Management may not have full authority to negotiate meaningful issues (2) may cause whipsawing among similar installations state-wide.

(3) Functional Unit – Includes all employees in an identifiably distinct functional area or activity

- (a) horizontal – example: all blue-collar employees *(city-wide, state-wide)*
- (b) vertical – example: all employees of the State Welfare Board
- (c) Advantages: Many fewer units. Top-level management with authority and expertise does negotiating.
- (d) Disadvantages: Individuality of employees and problems of each individual worksite are lost in the total picture.

NOTE: Discuss prevalence of each type of unit and any other types which may exist in your jurisidction.

D. Other Problem Areas at the Petition Stage

1. Rival unions

a. After a petition has been presented, another union may express a desire to also be the representative of that unit of employees

- (1) Most states *(and Federal government)* require that the intervening union present a 10% showing of interest drawn from the same bargaining unit, to be placed on the election ballot
- (2) Some states *(California Teachers Law)* allow minority recognition. Multiple, non-exclusive, recognition exists by law in some states and in the absence of law in other states.

NOTE: Where the intervenor desires a different bargaining unit, 30% of the pr posed unit is required.

b. After a union has been certified as the exclusive representative, after a certain period of time, another union may challenge its status. Generally, 30% showing of interest is required.

NOTE: How long is the incumbent uni protected from challenge by your state law?

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TRAINING PLAN

COURSE TITLE: **COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE & LOCAL)**

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UNIT NO. III

UNIT TITLE: **Petition, Election, and Recognition Stages**

Subject Matter Content	Instructor Guidance
2. Bars – Several types of bars prohibiting petitions during certain periods are found in many state labor relations statutes. Generally, they are:	**NOTE:** Discuss the types of bars, if any, provided by your state/local statute.
a. Election Bar – No petition for a unit if there has been a recent representation election for the same unit *(length of bar from 6 to 12 months in different jurisdictions)*	
b. Certification or Recognition Bar – If a union has been certified or recognized as the exclusive representative, but a contract has not been negotiated, other unions are barred from petitioning for that unit or any subdivision for a certain period of time, usually 12 months from certification. *(Decertification petitions are also barred by a certification bar)*	**NOTE:** Decertification is covered in depth at a later point in the unit.
c. Contract bar – If a negotiated agreement is in force, the incumbent union is protected from challenge or decertification for the life of the contract. There is generally an open period of 30 days near the contract expiration date so that a rival union may challenge or a group of employees may seek decertification before the incumbent union and management renegotiate the contract.	**NOTE:** In the private and Federal sector a contract is presumed a valid bar for no more than three years. Is this true in your jurisdiction?
3. **Decertification**	**Objective:** To discuss the decertification process
a. The Federal Government and many states provide machinery for the decertification of an exclusive representative (1) Action may be initiated by management or by a group of employees not by a rival union. (2) Decertification action is appropriate if a "good faith doubt" that the union represents the majority of employees exists.	

Subject Matter Content	Instructor Guidance
b. Generally, a 30% showing interest is required to begin decertification. i. Decertification, like any other type of petition, may not be filed when any bar *(election, certification, or contract)* is in force. ii. An election will be called if it is determined that there is a genuine question that the exclusive representative no longer represents a majority of employees.	**NOTE:** Check your law or regulation.
E. What Actions Should Management Take at the Petition Stage? **1. Take an active role in unit determination**	**NOTE:** Begin by discussing "Discussion Proposition # 1", (CMIII-1) after some discussion, supply information from outline.
a. If state/local statutes allow management discretion at any phase of unit determination, management should actively seek the unit which will promote effective and efficient dealings.	**Instructor Guidance:** Individual work and group discussion on Case III-2, "The ABC Agency"
2. Make sure all mandatory criteria *(exclusions)* are met a. Determine exactly which positions are supervisory, management, professional, etc.	

COURSE TITLE: COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE & LOCAL)

UNIT NO. III

UNIT TITLE: Petition, Election, and Recognition Stages

Subject Matter Content | **Instructor Guidance**

II. THE ELECTION STAGE

Objective: To make participants aware of what takes place during the Election Stage and of what management's responsibilities are.

Reference Material:
"The Collective Bargaining Process," RN I-3, p. 4.

A. The scene at the election stage

1. A union's petition for recognition has been accepted as a valid document. Labor relations authority *(employer or state board)* has decided that there is reason to believe that a significant number of employees desire representation.

2. Hearings may have been held by the labor relations authority to determine the appropriateness of the unit petitioned for *(inclusions and exclusions, community of interest, etc.)*

B. Purposes of the election may be:

1. To determine if a majority of employees wish to be represented

2. To determine which of several unions the employees desire as their representative

3. To determine if professional employees wish to be included in a unit with other employees

4. To determine if employees wish to continue being represented by the incumbent union *(decertification)*

NOTE: Decertification is discussed separately in part I. D. 3.

C. When is an Election Necessary?

1. Private sector – election held only when employer with good faith doubt refuses to recognize a union with a valid showing of interest (51%), or when employer requests a consent election, or when more than one union petitions for recognition.

2. Federal sector – election is required in all cases

3. Other Public sector models

   a. Many jurisdictions follow the private sector model where the employer may recognize the union **or** request an election *(Maine)*

   b. Other jurisdictions follow the Federal model by requiring an election in all cases *(Nebraska)*

NOTE: Discuss your process

c. If there is no labor law, the employer will generally request that an election be conducted by a neutral third party

D. Conducting an Election

1. Elections are generally conducted by the body charged with administering the labor law. Where no body exists a neutral third party may be retained.

2. The parties to an election will usually sign an election agreement before the election. The agreement specifies permissible conduct for both parties.

a. Body administering labor law generally sets standardized rules for election conduct.

3. Standards of Conduct for Elections

a. Employees must be given the chance to express their choice in an atmosphere free from pressure and undue influence

(1) In jurisdictions where employer is allowed to express his opinions, he should avoid:

(a) Making speeches to captive audiences of employees during non-duty time *(NLRB ruling: private sector)*
(b) Promising benefits or threatening punitive actions
(c) Making deliberate misrepresentations
(d) Electioneering, or being physically present, at the polls

Subject Matter Content	Instructor Guidance

(2) The union has the right to wage a vigorous campaign; however, the union should not be allowed to:

- (a) Coerce employees in the exercise of their rights
- (b) Make deliberate misrepresentation of other unions running
- (c) Force employers to coerce employees

(3) Elections must be by secret ballot. Only persons in the proposed unit are eligible to vote

- (a) There is generally a written eligibility agreement prior to the election
- (b) Voters may be challenged if there is good faith doubt that they are
  - i. no longer employed
  - ii. excluded from the unit

(4) Employees are always given a choice on ballot among the representative organizations and "no union."

- (a) "no union" must always be on ballot except in case of run-off
- (b) professional employees may be given third alternative, i.e. separate unit

(5) In order to win an election, the union must receive a majority of the votes cast

NOTE: Cite your process here

- (a) Federal and most states require only majority of votes cast *(If three votes are cast in a unit of 200 people, with two votes for union, the union receives majority of votes cast.)*
- (b) However, some states require that a certain percentage of employees must vote for the election to be valid *(example: New Mexico - 60%)*
- (c) Other states require that union must receive votes equal to majority of those eligible to vote *(example: Delaware Teachers law)*.
- (d) If no labor organization on the ballot receives a majority, there is a run-off election

(e) If there is a tie between a union and no union:

- i. Private sector - union loses
- ii. Federal sector - fun-off election conducted

E. What Steps Should Management Take at the Election Stage?

1. Management should guarantee that all requirements of the election process are followed in letter and spirit. All management officials must be informed of what they can and cannot do. If neutrality is not required, management must weigh the benefits of actively opposing organization against the possible backlash by employees, the community, and other concerned elements.

NOTE: Discuss "Discussion Proposition # 2" CMIII-3 and then supply information from outline.

Instructor Guidance: Individual work and group discussion of Case III-4, "Election."

2. It is, however, in management's best interest to mount a "get-out-the-vote" campaign

a. Suggested management actions

- (1) Publicize election date
- (2) Schedule election for pay day
- (3) Give employees time off to vote
- (4) Place polls in prominent places with convenient access.

Subject Matter Content

III. THE RECOGNITION STAGE

A. The scene at the recognition stage

1. A union has won a majority of the votes cast in a representation election or has been voluntarily recognized by management. The labor relations authority body has certified the results of the election

2. Management must now deal with an exclusive representative

B. The meaning of exclusivity

1. Collective bargaining is industrial democracy. Citizens elect their governmental representatives and give them power to deal in their best interests. By the same token, employees invest their exclusive union with the power to deal with management in their best interests.

2. Once there is an exclusive representative on the scene, the entire management process, as well as management's employee relations program, is affected.

3. Let us examine some of the implications of exclusivity.

   a. Implications for employees
      (1) Employees have the right to join, form or assist a labor organization and the right not to do so *(in the absence of negotiated union security provisions).*
      (2) Employees have the right to be represented by their union in grievances against management.
      (3) Employees may choose not to be represented by the exclusive union, but an employee may not seek a settlement inconsistent with the provisions of the contract.

Instructor Guidance

Objective: To bring home to participants what it means to management to have a recognized exclusive representative on the scene.

Reference Material:
"The Collective Bargaining Process," RN I-3, p. 5

Reference Material:
"The Impact of Collective Bargaining on Management," RN I-4

"The Meaning of Exclusivity" RNIII-1

"Good Faith Bargaining" RNIII-2

NOTE [illegible] your jurisdiction allows union security provisions, discuss them here.

Subject Matter Content	Instructor Guidance

(4) All employees are **bound by the terms of the agreement** negotiated by management and the exclusive union.
(5) Only union members may vote to ratify any agreement negotiated.

b. Implications for the exclusive union

(1) The union must represent all employees in the unit, without discrimination, whether or not they are members.
(2) The union may negotiate a binding collective bargaining contract covering all employees in the unit. The union must negotiate in good faith with management.
(3) The union has the right and obligation to police and enforce the collective bargaining agreement.
(4) The union has the right to consult or negotiate with management on **all** issues covered by the scope of bargaining.

c. Implications for management

(1) Management must consult and/or negotiate with the exclusive union on all matters appropriate to the scope of bargaining. Failure to do so is considered a breach of good faith in the private sector and in many public sector jurisdictions.
(2) Management should not **negotiate** with other interest groups *(i.e. other unions, employee groups, service organizations)* or with individual employees. Management may **consult** with these parties, but, at a minimum, should keep the union informed of any discussion of issues appropriate to the scope of bargaining.
(3) Management must not circumvent the exclusive representative in dealing with employees. No matter how well-meaning management may be, they **should** go through the exclusive representative in all matters within scope of bargaining.

NOTE: Begin by discussing "Discussion Proposition # 3, CMIII-5

NOTE: If your jurisdiction allows only consultation or proportional representation, discuss here.

Subject Matter Content

(4) Management may not make unilateral decisions on any matter within the scope of bargaining. This is not to say that management loses its right to manage. Management should be prepared to use the collective bargaining process as a problem-identifying and problem-solving mechanism.

(a) The Federal Executive Order and many state laws reserve certain "management rights," especially the right to determine the mission of the agency, and to hire, promote, transfer, assign and otherwise direct employees of the agency, and to take disciplinary actions in accordance with merit principles. If these rights are not retained under law, a management right clause may be negotiated into the contract.

(b) Dealing in good faith does not obligate management to agree to a proposal or to make concessions. The only requirement is that management willingly meet and confer on substantive issues, with the intent of concluding an agreement on a give and take basis.

Instructor Guidance

Unit III Reference Materials:
"Glossary of Collective Bargaining Terms" **(RNI-2)**

"Impact of Collective Bargaining on Management" **(RN I-4)**

"The Collective Bargaining Process" **(RN I-3)**

"The Meaning of Exclusivity" **(RNIII-1)**

"Good Faith Bargaining" **(RNIII-2)**

Unit III Instructor Reference:
State Laws may be found in:

1. **Government Employee Relations Report** *(Reference Notebook)* published by the Bureau of National Affairs
2. **Public Personnel Administration: Labor Management Relations** published by Prentice-Hall, Inc. *(also includes invidual states' rules of operation)*

INSTRUCTOR GUIDANCE

FOR UNIT III CASES

The following is guidance for teaching the cases in the previous unit. You may use the cases either to introduce a point or to summarize points already made. The shorter cases are best used to introduce a point which is then reinforced by the instructor with material from the Instructor's Guide. In all cases, the participants should work within the framework of your jurisdiction's law.

CM III - 1 "Proposition #1"

1. Of course, unit size and composition are of importance to management.

2. Most importantly, unit size and composition impacts on the scope of bargaining. (See Units I and III)

CM III - 2 "The ABC Agency"

Consider, of course, your state's criteria for unit determination.

1. Yes, it's an appropriate bargaining unit if community of interest is the only criteria used.

2. No, it's not the most appropriate unit. There is no real authority for permanent change at the Field Office level. There are frequent moves of personnel from and to the Field Office. Real authority for personnel and budget is concentrated at the State Office level.

3. Arguments for the unit
   a. Community of interest
   b. Geographic
   c. Contract would concentrate on problems unique to the site

4. Arguments against the unit
   a. Fragmentation
   b. Might result in different personnel policies/practices for Columbia Field Office
   c. Field Supervisor really has nothing to negotiate

5. Management should consider suggesting that the union petition for a state-wide unit. This will depend on your state's law, of course.

CM III - 3 "Proposition #2"

A "get-out-the-vote" campaign is certainly in management's best interest. Publicity is a good way of informing employees of the date, time and place of the election. Make provisions to aid employees in voting, but don't force them to vote. You might:

1. place the poll in a prominent place

2. give employees administrative time to vote

3. schedule the election for payday

CM III - 4 "Election"

The response to this question depends in large part on whether your state requires neutrality.

Mistakes of the supervisor:

1. escorting everyone to the polls (coercion)

2. implying promotion discrimination for union activity

Conclusion: Management should urge employees to vote, but not force them. Be careful of implying that union activity is a "strike" against an employee.

CM III - 5 "Proposition #3"

The nature of the exclusive relationship requires that the union represent all employees. In principle, this is similar to the elective process in a free society. In the political arena, the people elect their governmental representatives by a majority of ballots cast. The elected official represents all the people in his jurisdiction, even if they did not vote, voted for someone else, or are members of another political party. This is precisely the condition under which a union represents the people in the unit.

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TRAINING PLAN

COURSE TITLE: COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE & LOCAL)

UNIT TITLE: The Negotiations Process

UNIT: IV

TOTAL TIME: 4 - 8 hours

METHODS: Participatory lecture, case discussions, films

TRAINING AIDS: Cases, film: "Dynamics of Negotiations"

Subject Matter Content

I. PREPARATIONS:

Thorough preparations are 90% of successful bargaining.

A. One aspect of preparations is the selection and training of the management negotiating team.

1. Chief Spokesperson
   - a. Available to devote sufficient time
   - b. Proper experience and background
2. Other members of negotiating team should be representative of
   - a. Line management
   - b. Budget-financial
   - c. First-line supervisors
   - d. General personnel specialists and labor relations experts
   - e. Legal Counsel — Probably better as advisor than as team member. Should know labor relations if actually on the team.
   - f. Outside consultants — Can be good or bad, depending on their skill and expertise and how well management uses them.
3. Size of the bargaining team
   - a. The size of the team will be influenced by the geographic and functional dispersion of the unit.
   - b. 3 to 7 members is reasonable
   - c. To be considered: The size of the management team will probably impact on the size of the union team.

Instructor Guidance

Instructor Guidance: The material covered in this Outline is best used in conjunction with the Bargaining Simulation in the next unit. The instructor probably will want to discuss some of it before the simulation, and some after.

Objective: To bring home to participants how important preparations are to successful bargaining.

Teaching Material:
Case — "Selecting the Management Negotiating Team," **CM IV-1**

Reference Materials:
"Bargaining Preparations,"
RN IV-1

"Tactics and Techniques of Collective Bargaining Negotiations,"
RN IV-2

TRAINING PLAN

COURSE TITLE: **COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE & LOCAL)**

UNIT NO. IV

UNIT TITLE: **The Negotiations Process**

Subject Matter Content	Instructor Guidance

4. To ensure intra-team discipline during negotiations, all members should be briefed regarding the "rules of the game"
    - a. No open disagreements at the bargaining table
    - b. Use caucus to resolve disagreements
    - c. Only one spokesman at a time
    - d. Orderly intra-team communication process, e.g., passing written messages to chief spokesman
    - e. Members not to get into side arguments with union negotiators

B. The management negotiating team needs the authority to negotiate:

Teaching Material:
Case – "Authority to Negotiate,"
CM IV-2

1. Authority to conclude agreement
2. Authority to bind management
3. Sufficient authority to have credibility with the union negotiators at the bargaining table
4. In order to obtain this authority, the management negotiating team should:
    - a. Brief executives on what is expected in the way of demands from the union
    - b. Establish parameters on how far management will go on negotiable matters
    - c. Set limits on how far management will go in discussing non-negotiable matters
        - (1) Must look at negotiations as a "problem solving" process
    - d. Report to executives on progress of negotiations
        - (1) Compare progress with established goals and objectives

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COURSE TITLE: **COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE & LOCAL)**

UNIT NO. IV

UNIT TITLE: **The Negotiations Process**

Subject Matter Content	Instructor Guidance
C. The management negotiating team must gather, compute, and analyze all information necessary to properly negotiate and administer a collective bargaining agreement and an overall labor relations program. (The Bargaining Book)	**Teaching Material:** Case – "Collection of Bargaining Data," CM IV-3

1. Analyze current wage and fringe benefit data
   - a. Wages
   - b. Fringe Benefits
     - (1) Sick Leave
     - (2) Vacations
     - (3) Other types of leave
     - (4) Group insurance, etc.
2. Analyze all grievances
   - a. Issues that have been grieved
   - b. Settlements on grievances
3. Analyze arbitration cases
   - a. Issues arbitrated
     - (1) Bad contract language
     - (2) Past practices
   - b. Arbitration decisions or awards
     - (1) Have they changed the meaning of contract clauses?
4. Communicate with other members of the management team, especially front-line supervisors
   - a. Determine problem areas in administering the existing contract
   - b. Determine the status of supervisory - employee relations
   - c. Obtain suggestions for new contract language
     - (1) Management "needs" identified

TRAINING PLAN

COURSE TITLE: COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE & LOCAL)

UNIT NO. IV

UNIT TITLE: The Negotiations Process

Subject Matter Content

D. One of the most importnat aspects of bargaining preparations is the anticipation of union proposals

1. **Analyze in detail the present contract, if any**
    - a. How have various contract clauses worked in practice?
    - b. If there is no contract, analyze the existing terms and conditions of employment, work rules, regulations, personnel policies and practices, etc. to identify problem areas
2. **Analyze in detail grievances and arbitrations**
    - a. Determine what issues were involved
    - b. What were the settlements?
    - c. Try to determine the union's perspective on the issues and settlements: Are they likely to make a proposal relating to the grievances?
3. **Analyze economic data on issues likely to be of importance to the union in the next negotiations**
4. **Review existing negotiated agreements of this union, other unions**
    - a. In facility, if any
    - b. In agency, if any
    - c. In other agencies
    - d. In other sectors, public and private
5. **Use various sources to review current collective bargaining trends**
    - a. Bureau of National Affairs
        - (1) "Government Employee Relations Report"
        - (2) "Collective Bargaining Negotiations and Contracts"

Instructor Guidance

Teaching Material:
Case – "Anticipating Union Demands,"
CM IV-4

Subject Matter Content	Instructor Guidance
b. Prentice – Hall (1) "Public Personnel Administration: Labor-Management Relations" c. Commerce Clearinghouse: services similar to those provided by BNA & Prentice – Hall d. Department of Labor: (1) Bureau of Labor Statistics (a) Employment and Earnings (b) Cost of Living Data (c) Special Studies (2) Labor Management Services Administration 6. **Very important: Meet with and obtain feed-back from managers and supervisors** a. This improves their knowledge of what is happening. b. Provides information on good and bad aspects of existing labor-management relations; workability of contract clauses, existing work rules, personnel policies, etc. c. Usually helps identify union issues, priorities, goals, etc.	
E. **It is vital that management formulate its own bargaining proposals – and, later, counter-proposals.** 1. **Management should be positive and activistic and should try to take the leadership role in negotiations** a. To correct problem areas b. To protect management's ability to manage c. To engage in "productivity bargaining" 2. **Do not bargain solely from union proposals** a. Merge union proposals with management proposals.	**Reference Material:** "Bargaining Preparations," RN IV -1

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UNIT NO. IV

UNIT TITLE: The Negotiations Process

Subject Matter Content

b. Bargain from management's proposals.

c. Understand and, where possible, meet union needs. Recognize that unions are political institutions.

II. THE COST OF COLLECTIVE BARGAINING

A. Management must budget to handle labor relations

1. **Management structure must meet labor relations priorities**
    - a. Must have top management commitment to labor relations
    - b. Labor relations staff must have access to head of agency
2. **Management must adequately staff to handle labor relations**
    - a. Sufficient labor relations expertise
    - b. Line and staff cooperation
    - c. Staff support to line management

B. Management must cost-out union and management proposals — during preparations and throughout negotiations

1. **Estimate impact in terms of cost-benefit ratio**
2. **Estimate impact in terms of employee well-being**
3. **Estimate impact in terms of management effectiveness and mission accomplishment**

C. Costing — Direct Costs

1. **Wages**
2. **Fringe benefits**

Instructor Guidance

Objective: To stress importance of costing out all aspects of labor relations.

Subject Matter Content	Instructor Guidance
3. Pensions	
4. Overtime	
D. Costing — Indirect Costs	
1. Lost time	
a. Rest periods	
b. Wash-up time	
c. Union stewards investigating and processing grievances	
2. Union participation in management functions	
a. Union - management study committees	
b. Safety committees	
E. Productivity Management	
1. Definition — greater output per unit of input	
a. This is a management obligation	
2. Productivity collective bargaining	
a. Definition — bargaining changes in work rules and practices with the objective of increased productivity and reciprocal worker gains	
b. Positive — improving work rules for more efficient production	
c. Negative — negotiating to remove non-productive practices from the contract	
d. Protecting management's rights	

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UNIT TITLE: The Negotiations Process

Subject Matter Content

III. GROUND RULES

(Procedural Guidelines for Conduct of Negotiations): These preliminary decisions are important in setting the scene for successful bargaining.

A. Site for Negotiations
   1. Neutral ground
   2. Physical comfort of parties
   3. Availability of private caucus facilities
   4. Sharing of any costs of negotiation facilities

B. Timing of Sessions
   1. Date and time of first session
   2. Date and time for succeeding sessions
   3. Length of individual sessions

C. Mutual understanding on use of caucuses

D. Procedures for exchange of proposals

E. Mutual understanding that both parties can present proposals

F. Understanding as to size and complement of committee and whether observers may be present during negotiations

G. Understanding that each party will keep its own notes on negotiation sessions

H. Possible impasse resolution procedures

I. Understanding that agreement on specific clauses is tentative subject to agreement on the total contract.

Instructor Guidance

Objective: To explain the role of ground rules in successful negotiations

Teaching Material:
Case – "Ground Rules for Negotiations," **CM IV-5**

NOTE: In the Federal Sector official time may be granted up to one-half of the time used or 40 hours.

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IV. Film: Dynamics of Negotiations in Public Education

A. Synopsis of Film:

The film depicts negotiations between a local school board and a Teachers' Association. Describes formal negotiations and use of caucuses. Illustrates the mechanics of bargaining sessions, tactics used by the parties, and some issues which may arise in public sector negotiations. Role playing with some narration.

B. Mechanics of Negotiations Brought Out by the Film:

1. Shows the importance of prior preparation and the use, during negotiations, of the bargaining book; stresses the importance of organizing materials and other data to be used.
2. Describes the establishment of ground rules prior to actual negotiations.
3. Shows both parties working within the constraints established by their constituents *(school board and Association members)*.
4. Illustrates fixed time limits established for bargaining sessions. Also, the time limit for over-all negotiations is set to coincide with the budget submission date.
5. Agreement on any one item is tentative until the over-all package is finalized and agreed upon.
6. The role and utility of the caucuses is demonstrated.
7. Illustrates the use of counter-proposals; the importance of bargaining team unity; and the advantage of having a single spokesperson.

C. Bargaining Tactics and Techniques Brought Out by the Film:

1. Union insistence on being treated as equal of management.
2. Union threat of a job action as a way to bring pressure upon management.
3. Union treating each item as a separate issue.

Instructor Guidance

NOTE:

1. This film is a bit long, but it's time well-spent if the instructor wants to emphasize how negotiations work.

2. Can be purchased for $250.00, from

Educational Services Bureau
610 Madison Street
Alexandria, VA 22314

3. Produced by Astrafilms, Inc.

4. 50 minutes

4. Management insisting on looking at the over-all costs of the package.

5. Management insisting on getting all of union's demands on the table before bargaining begins.

6. Both sides making sure what authority they have to commit their constituent groups before coming to the table; probing to find out what authority the other party has.

7. Trading-off different items.

8. Trying to anticipate demands of opposite party so as to have counter-proposals or positions ready.

9. Use of caucus to air intra-team difficulties.

10. Insisting on tentativeness until constituents are polled as a way of providing the parties with flexibility.

11. Union making a large number of demands.

12. Management presenting counter-demands.

13. Use of personal attacks, sarcasm, and emotional rhetoric.

14. Management insisting that its "rights" make some items non-negotiable.

D. **Strengths of Film:**

1. Relies on action, rather than narration, to make most of its points.

2. Generally even-handed treatment of both sides.

3. Illustrates the real complexity of negotiations.

4. Fairly good acting with adequate dialogue.

Subject Matter Content	Instructor Guidance

E. **Weaknesses of the Film:**

1. Weak on criteria used to defend demands and on use of supporting data.

2. Does not explain how management might have treated all the union's demands as a package, rather than separately.

F. **Questions to Ask Participants:**

1. Why would one side make demands which it knows the other side would refuse to accept and which it is prepared to drop?

2. Why don't the parties just present what they genuinely feel are the most important and realistic proposals?

3. How far should management go in discussing or committing its side to agreement on items which have not been discussed with higher management?

4. Should top management officials participate in negotiations?

5. Should management agree to vague contract language which it suspects will only lead to trouble during contract administration?

8. What were some of the bargaining tactics and techniques brought out by the film?

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Subject Matter Content

V. SCOPE OF BARGAINING (What's negotiable?)

A. What is bargainable varies substantially from one public jurisdiction to another, depending upon the law, order, or rules applicable.

1. It is important that competent advice be sought to determine exactly what is bargainable and what is not bargainable.

2. To say that a subject is not bargainable or non-negotiable, one must be certain that is is not, in fact, bargainable.

    a. A claim of non-negotiability, if not factual, might leave a party open to unfair labor practice charge for refusal to bargain in good faith.

    b. Advice on the parameters of negotiable subjects should be sought early in the game.

3. Emphasis has been toward expansion of bargainable subjects to provide meaningful bargaining, rather than limiting them.

    a. Limitations on negotiable subject matter often have restricted healthy labor-management relations.

    b. Expansion of the scope of bargaining encourages labor organizations to bring their problems to the bargaining table rather than to seek other avenues to attain their goals.

Instructor Guidance

Objective: To review the issue of what's negotiable.

NOTE: This general discussion should be given in conjunction with a discussion of what is negotiable in your jurisdiction, and why.

Reference Material:
"Scope of Negotiations,"
RN IV-3

Subject Matter Content	Instructor Guidance
B. National Labor Relations Act (NLRA) – Scope of bargaining – as stated in the law and as it has developed over the years by interpretation of the Act.	**NOTE:** We in public sector labor relations often look to private sector precedent for guidance. See # VI. B for a discussion of prohibited, permissive and mandatory subjects of bargaining in the federal sector.

1. In the Act: " . . . to bargain collectively is the performance of a mutual obligation . . . confer in good faith with respect to wages, hours, and other terms and conditions of employment . . . ". (Sec. 8 (d)).
   a. When one party makes a proposal relating to these subjects, the other party must negotiate.
   b. The party advancing the proposal can insist to the point of impasse that it be included in any contract executed.
2. **Wages, hours, and other terms and conditions of employment are interpreted to include the following:**
   a. Any matter affecting employee's pay
   b. Most employee benefit plans *(insurance, pension, profit-sharing and stock purchase)* are considered a condition of employment and bargaining is mandatory. *(Employer's unilateral change runs the risk of a violation of the law.)*
   c. Most fringe benefits are mandatory subjects of bargaining *(vacations, holidays, etc.) (Exceptions are employer contributions to union scholarship and child care programs which are permissible.)*
   d. Working conditions such as seniority, disciplinary procedures, grievance and arbitration procedures are included under "other conditions of employment."
   e. Union security arrangements are interpreted as "other conditions of employment."
   f. Employer's demand for management rights clause is bargainable to point of impasse.
   g. Subcontracting is a subject for bargaining.

h. Employer must bargain over impact of operational changes, partial closing and reorganizations.

i. Contract scope and term is bargainable.

C. In the Federal Government, the scope of bargaining enunciated in Executive Order 11491, as amended, is much narrower:

1. "An agency and a labor organization . . . shall meet at reasonable times and confer in good faith with respect to personnel policies and practices and matters affecting working conditions, so far as may be appropriate under applicable laws and regulations, including policies set forth in the Federal Personnel Manual, published agency policies and regulations, a national or other controlling agreement at a higher level in the agency and this order."

2. The Federal Labor Relations Council is the final authority on whether or not a matter is negotiable. It has not used the prohibited, permissive and mandatory categories of the private sector.

3. In recent negotiability decisions, the Federal Labor Relations Council seems to be taking a fairly broad view of what is bargainable in the Federal sector.

4. Also in an effort to widen the federal scope of bargaining, the U. S. Civil Service Commission is revising the Federal Personnel Manual to separate those areas that are regulation *(non-bargainable)* and those areas that provide guidance *(bargainable)*.

NOTE: Has legislation been proposed in your jurisdiction? What does it say about scope of bargaining?

D. State and Local Scope of Bargaining: Proposed

1. **National Public Employee Relations Act** *(Proposed) (An Act introduced in U. S. Congress to provide collective bargaining for state, county and municipal employees and set uniform state standards.)*

   a. Scope of bargaining proposal *(Section 3)*: " . . . to bargain collectively through representatives of their own choosing on questions of wages, hours and other conditions of employment, . . . ". Broad scope.

2. State Public Employee "Meet and Confer" Act. (A model proposal of the Advisory Commission on Intergovernmental Relations.)

   a. Scope of bargaining (Section 10, in part): "The scope of a memorandum of agreement may extend to all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment except, however,

      (1) any subject preempted by Federal and State law or by municipal charter.
      (2) public employee rights defined in Section 4 of this act.
      (3) public employer rights defined in Section 6 of this act, or
      (4) the authority and power of any civil service commission, personnel board, personnel agency, or its agents ---."

   b. The scope is substantially limited by the exceptions in this proposal. It should also be noted that "bargaining" is not mandatory.

E. Bargaining Rights & Scope of Bargaining in the Public Sectors of Various States

1. In some states, there is the requirement to bargain collectively over wages, hours & other terms & conditions of employment for some, several or all categories of public employees.

2. In other states, there is the requirement to meet & confer regarding wages, hours & other conditions of employment for some, several or all categories of public employees.

3. In still other states, the parties are permitted to bargain collectively or employee organizations have the right to present proposals.

NOTE: Instructor will want to plug in the language of the act covering your jurisdiction.

Lists of states and categories have not been included because they change so rapidly. Sources for this information include
- "Government Employee-Relations Report," BNA
- "Public Personnel Administration: Labor-Management Relations," Prentice-Hall

NOTE: Some of these are based on court decisions rather than legislation.

Subject Matter Content	Instructor Guidance
4. For other jurisdictions, the law is silent regarding public employee collective bargaining, but the bargaining often takes place anyway. Examples:	
a. Connecticut (state)	
b. District of Columbia (teachers)	
c. Ohio	
F. Civil Service and the Scope of Bargaining	**NOTE:** Is this a problem in your jurisdiction? If yes, how is it manifested? If no, how avoided?
1. Public sector collective bargaining often conflicts with traditional civil service systems governing public employment.	
2. Civil service systems often encompass a broad public personnel program involving unilateral descision-making regarding such things as:	
a. Recruiting and selecting.	
b. Policing anti-political and anti-discrimination rules.	
c. Administration of appeals procedures, grievances and adverse action matters.	
d. Position classification.	
e. Pay administration.	
f. Job evaluation.	
g. Employee benefits.	
h. Employee training.	
3. In addition, there may very well be conflicts between the merit principles governing public employment — which should be preserved — and certain union goals, such as:	**NOTE:** Distinguish between merit principles and merit systems. Every effort should be made during negotiations to protect and preserve merit principles.
a. Seniority	
b. Some forms of union security	

4. Different jurisdictions are handling these conflicts in different ways.

G. **A discussion of Scope of Bargaining in the Public Sector—vis-a-vis the private sector — is complicated by several conflicting issues**

1. There is an ever-present concern about sovereignty

    a. This often results in a legislatively required Management Rights clause

2. Much of public employment involves the provision of services. Many of those in the service professions are interested in bargaining about things which, in fact, impact on the traditional management right to accomplish agency mission. Examples:

    a. Public schools: class size, curriculum, student discipline

    b. Public welfare agencies: case load, basic program, client care

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VI. GOOD FAITH AND COLLECTIVE BARGAINING

A. What constitutes "good faith"?

1. National Labor Relations Act - Section 8(d): "For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any questions arising thereunder, and the execution of a written contract incorporating any agreement reached, if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession."

2. Good faith is a question of fact, which is decided in each case. Both management and the union are obligated to negotiate in "good faith." The parties are not required to reach an agreement but should be prepared to show that failure to reach an agreement was not because of lack of good faith.

    a. Negotiating with intent never to come to an agreement is bad faith. Intent is found or implied by stalling and delaying tactics.

    b. Initial cooperation between the parties in getting preliminaries out of the way is an indication of good faith even though negotiations may later breakdown.

    c. Withdrawing concessions, once made, is sometimes an indication of bad faith.

3. Leading case: American National Insurance Case, U.S. Supreme Court. Is an employer compelled to accept a proposal for a grievance procedure in a contract that has binding arbitration as the final step? The Court ruled: NLRA does not require that a party make a concession or agree to anything. (Emphasis: the importance of the facts in each case.)

4. NLRB - Definition of bargaining obligation.

    a. Meet at reasonable times and places.

    b. Confer in good faith.

Instructor Guidance

OBJECTIVE: To give a basic understanding of what is good faith in labor relations.

NOTE: This discussion, too, needs to be related to the law and case precedent in your jurisdiction.

Teaching Materials:
Four cases are included in an effort to illustrate the meaning of good faith.

- "Refusual to Select a Date," CM IV-6
- "Repudiation of Prior Concessions," CM IV-7
- "Unilateral Management Action," CM IV-8
- "Dealing Directly with Employees," CM IV-9

Reference Material:
"Good Faith Bargaining – Private Sector Experience," RN IV-4

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c. To bargain wages, hours and other terms and conditions of employment.	
d. Does not require either party to make a concession or agree to a proposal.	
e. To reduced agreements to writing, if requested by either party.	
5. "Boulwarism" - General Electric Company. Example of bad faith.	
a. Bargaining directly with employees rather than through certified employee organization (public relations!)	
b. Single, opening management offer. "We are willing to listen to your facts, but this is our offer." Take-it-or-leave-it basis.	
B. Good Faith and Scope of Bargaining.	
1. Bargainable subject matters are divided into three general categories. Under certain circumstances a union or management refusal to back off of the demand to point of impasse might constitute a lack of good faith.	
a. Illegal items - demands might constitute a refusal to bargain in good faith.	
(1) Closed shop (other union security provisions where prohibited by law). (2) Right to strike (where prohibited by law). (3) Management demand that would abrogate employees' rights under law.	
b. Voluntary or permissive items.	
(1) Rules, regulations and policies on which management is not required to bargain.	
c. Mandatory items.	
(1) Wages, hours, and other terms and conditions of employment. *(NOTE: Subject to statutory exclusions, such as those contained in E.O. #11491, as amended, some state laws. A demand on a subject specifically excluded might constitute a refusal to bargain in good faith.)*	

C. What constitutes "bad faith"?

1. Failure to furnish bargaining data.

   a. NLRB has ruled that management has a bargaining duty to furnish financial data to an employee organization, including data on non-cost items, when requested by the employee organization. This would include financial data on wages, fringe benefits, pensions, and non-cost data on employee evaluation, seniority, etc. To refuse is considered "bad faith".

      (1) failure to furnish the data is viewed as removing the subject from the bargaining table just as effectively as an outright refusal to discuss the matter.

   b. Michigan State College case. Union demanded employee evaluation forms and job applications. College administration maintained information was confidential. Court ruled: Issue is not confidentiality or whether general public has right to inspect these records, but rather if union has right to completely represent workers. *(NOTE: Right of inspection extends to those records which have a direct relationship to the topics being negotiated.)*

2. Unilateral change in working conditions

   a. California Superior Court. State law provides for public employers, below state level, to meet and confer in good faith, exchange information, and if possible, reach agreement. County hospital moved to subcontract food service operation. Court issued injunction against move, on the basis that hospital had not conferred in good faith with employee union. Court said that County must:

      (1) notify union,
      (2) confer in good faith but
      (3) County does not have to reach agreement with union.

3. **A refusal to discuss a subject within the areas of so-called mandatory bargaining.**

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4. The insistence to the point of impasse of including in the contract a subject that is outside the mandatory scope of bargaining. a. A management demand that all employees in the bargaining unit vote on ratification of the agreement, instead of just union members. b. A union demand that it function as a "hiring hall" where merit principles require employment on the basis of merit and fitness.	

Subject Matter Content	Instructor Guidance

VII. RESOLUTION OF BARGAINING IMPASSES

OBJECTIVE: To make participants aware of how collective bargaining impasses are resolved.

A. **Causes of Bargaining Impasses**

1. Difference of Opinion - The parties may have fundamental differences of opinion on issues and be unwilling to compromise.

2. Attitudes - Attitudes may impede settlement. One party may be hostile to the concept of collective bargaining or the parties may be antagonistic towards each other. Such attitudes may impede a settlement.

3. Unequal Bargaining Strength - A variation in the bargaining strength of the parties may impede settlement. The stronger party may feel no pressure to negotiate to a settlement or agreement and may adopt a take-it-or-leave-it attitude.

4. Lack of Experience - If the parties lack bargaining experience they may not use all the available techniques for resolving impasses.

B. **Techniques for Resolving Impasses** -

1. Unilaterial Techniques - The skillful use of negotiating techniques may result in finding ways to resolve bargaining impasses. For example:

   a. Skillful use of counter-proposals

   b. Recommendation that disputed items be moved to the end of the agenda

   c. Use of caucus to re-evaluate position or to gather more information

   d. Trade-off one item for another

2. Bilateral Techniques - The two parties may agree between themselves to use various techniques to resolve the impass.

   a. Joint Fact-Finding Committee - Differing interpretation of facts and issues may be resolved by establishing a joint fact-finding committee to study the situation.

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b. Temporary Implementation - An impasse may be broken by agreeing to implement a proposal for a fixed period and then reviewing the matter to see whether the matter should become permanent.

c. Staged Implementation - The parties may agree to implement a disputed proposal in stages, so the parties may adjust gradually to the new situation.

d. Referral of Impasse to Higher Authority - If the local parties are unable to reach agreement, they may refer the issue to a higher level of authority where persons with more authority may try to resolve the impasse.

3. **Third Party Intervention**

a. Mediation - A mediator is a person who:

(1) Has widespread collective bargaining experience.
(2) Acts informally and impartially.
(3) Meets separately and/or jointly with the parties.
(4) Seeks to define the issues in dispute.
(5) Discusses issues with parties and makes recommendations for settlement.
(6) Has no authority to force the parties to a settlement. He acts through persuasion.
(7) Must have the confidence of both parties.

b. Fact - Finding - A Fact-Finder is a person or a panel who:

(1) Operates in a more formal atmosphere than does a mediator,
(2) Holds hearing to ascertain facts,
(3) May require briefs be submitted by the parties,
(4) May allow cross examination of the witnesses,
(5) After ascertaining the facts of the situation, may make recommendations for settlement.
(6) May make recommendations public, with the hope that public pressure will force the parties to reach a settlement.

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c. Arbitration (Interest) - Arbitrators function in a manner similar to fact-finders, but their findings are generally binding on the parties.

(1) In Binding Arbitration the parties are bound to accept the arbitrator's decision, whatever it may be. The decision may not be appealed except under very strictly defined circumstances.

(2) In Advisory Arbitration the arbitrator weighs the facts and renders a decision which the parties are free to accept or reject. The value lies in the fact that the "Loser" is able to accept the decision voluntarily and to rationalize the acceptance to his constituency. Advisory arbitration is a phenomenon of the public sector and is virtually unknown in the private sector.

d. It is important to distinguish between "rights" and "interest" arbitration.

(1) Rights Arbitration - involves the interpretation and application of an existing agreement. It is the end step of a negotiated grievance procedure.

(2) Interest Arbitration - involves the settlement of terms and conditions that go into an agreement. It is the end step to the bargaining or negotiating process.

C. Functions of the Federal Mediation and Conciliation Service: The FMCS has a long and honorable history of resolving disputes in the private sector. Utilization of the FMCS was officially sanctioned in the Federal Service by EO 11491, as amended. The Service also gets involved in other public sector negotiations.

Reference Material:
"Regulations of the Federal Mediation and Conciliation Service,"
RN IV-5

1. Types of FMCS Assistance

a. Dispute Mediation - The FMCS will offer its assistance in any negotiation dispute when earnest efforts by the parties to reach agreement have failed. Based on a request for mediation through direct negotiation from either or both parties, the FMCS will examine the information concerning the dispute. If the FMCS determines that the need for mediation exists, it will use its best efforts to assist the parties. The FMCS will assist in any dispute except disputes concerning a question of the negotiability of an issue.

b. Preventive Mediation - The FMCS may make available educational services in order to build constructive and cooperative relationships between the parties.

c. Arbitration - Upon request, the FMCS will provide a list of arbitrators from its roster, for the resolution of any employee grievances over the interpretation and application of a negotiated agreement (Rights Arbitration). These grievance arbitrators are paid for by the parties, not the FMCS. These arbitrators are not concerned with the arbitration of bargaining impasses.

2. Procedural Requirements for Mediation

a. The parties negotiating their first contract must file a notice on form 53 with the FMCS Regional Director at least thirty days prior to the beginning of negotiations.

b. Parties desiring to amend, modify, or terminate an agreement must file the same Form 53 at least thirty days before contract expiration.

c. The FMCS will enter the dispute only after earnest direct negotiations have taken place.

d. The FMCS will make its services available on its own motion. The parties must cooperate fully.

e. If the parties mutually agree to use mediation from another source, they must notify the FMCS of this fact in writing.

D. State and Local Impasse Resolution: Proposed

1. National Public Employee Relations Act (Proposed by AFSCME, AFL-CIO)

"SECTION 10. *Mediation and Fact Finding.*

(a) The party desiring to modify or terminate a collective bargaining agreement, or otherwise modify terms and conditions of employment, shall notify the other party and the Federal Mediation and Conciliation Service, hereinafter called Service, sixty days prior to the time it is proposed to make such modification. The Service shall assign a mediator upon request of either party or upon its own motion.

(b) If upon expiration of an existing collective-bargaining agreement, or thirty days following certification of an exclusive representative, a dispute concerning the collective-bargaining agreement exists between the employer and the exclusive representative, either party may petition the Service to initiate factfinding. If no request for factfinding is made by either party prior to the expiration of the agreement, or thirty days following certification of an exclusive representative, the Service may initiate factfinding, as provided for in subsection (c) hereof.

(c) Within three days of receipt of such petition, or on its own motion, the Service shall submit to the parties a list of seven qualified, disinterested persons, from which list each party shall alternately strike three names, with the order of striking determined by lot, and the remaining person shall be designated "factfinder." This process shall be completed within five days of receipt of this list. The parties shall notify the Service of the designated factfinder.

(d) The factfinder shall immediately establish dates and place of hearings. Upon request of either party or the factfinder, the Service shall issue subpoenas. The factfinder may administer oaths and shall afford all parties full opportunity to examine and cross-examine all witnesses and to present any evidence pertinent to the issues in dispute. Upon completion of the hearings but no later than twenty days from the date of appointment, the factfinder shall make written findings of facts and recommendations for resolution of the dispute and shall serve such findings on the employer and the exclusive representative. The factfinder may make this report public five days after it has been submitted to the parties. If the dispute is not resolved fifteen days after the report is submitted to the parties, the report shall be made public. The parties shall continue the status quo for a period of sixty days from the date either party requests factfinding or the Service initiates factfinding on its own motion. During this sixty-day period, in order to permit the successful resolution of the dispute, the employer may not unilaterally change any terms or conditions of employment, and the employees shall not engage in a strike.

(e) The employer and the exclusive representative shall be the only parties to factfinding proceedings.

(f) Nothing in this section shall be construed to prohibit the factfinder from endeavoring to mediate or resolve the dispute, or from prohibiting the parties to substitute for these purposes any other governmental or other agency or party in lieu of the Service.

(g) Nothing in this section shall be construed to prohibit the parties from voluntarily agreeing to submit any or all of the issues in dispute to final and binding arbitration, and if such agreement is reached said arbitration shall supersede the factfinding procedures set forth in this section."

2. **State Public Employee Meet and Confer Act (A model proposal of the Advisory Commission on Intergovernmental Relations.)**

"SECTION 12. *Resolution of Disputes Arising in the Course of Discussions.*

(a) Public employers may include in memoranda of agreement concluded with formally recognized or certified employee organizations a provision setting forth the procedures to be invoked in the event of disputes which reach an impasse in the course of meet and confer proceedings. For purposes of this section, an impasse shall be deemed to exist if the parties fail to achieve agreement at least [60] days prior to the budget submission date of the public employer. In the absence or upon the failure of dispute resolution procedures contained in agreements, resulting in an impasse, either party may request the assistance of the Public Employee Relations Agency or the Agency may render such assistance on its own motion, as provided in subdivision (b) of this section.

(b) On the request of either party, or upon the Agency's own motion, if it determines an impasse exists in meet and confer proceedings between a public employer and a formally recognized or certified employee organization, the Agency shall aid the parties in effecting a voluntary resolution of the dispute, and appoint a mediator or mediators, representative of the public, from a list of qualified persons maintained by the Agency.

(c) If the impasse persists [10] days after the mediator(s) has been appointed, the Agency shall appoint a fact-finding board of not more than [3] members, each representative of the public, from a list of qualified persons maintained by the Agency. The fact-finding board shall conduct a hearing, may administer oaths, and may request the Agency to issue subpoenas.

It shall make written findings of facts and recommendations for resolution of the dispute and, not later than [20] days from the day of appointment, shall serve such findings on the public employer and the recognized employee organization. If the dispute continues [10] days after the report is submitted to the parties, the report may be made public by the Agency.

(d) If the parties have not resolved the impasse by the end of a [40] day period commencing with the date of appointment of the fact-finding board, (i) the representative of the public employer involved shall submit to the governing body or its duly authorized committee(s) a copy of the findings of fact and recommendations of the fact-finding board, together with his recommendations for settling the dispute; (ii) the employee organization may submit to the governing body or its duly authorized committee(s) its recommendations for settling the dispute; (iii) the governing body or such committee(s) shall forthwith conduct a hearing at which the parties shall be required to explain their positions with respect to the board; and (iv) thereafter, the governing body shall take such action as it deems to be in the public interest, including the interest of the public employees involved.

(e) Meet and confer proceedings and mediation, fact-finding, and arbitration meetings and investigations shall not be subject to the provisions of [insert State "right to know" law].

(f) The costs for mediation services provided by the Agency shall be borne by the Agency. All other costs, including that of fact-finding services, shall be borne equally by the parties to a dispute."

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E. State & Local Impasse Procedures:

1. Generally, those jurisdictions which require the parties to bargain collectively provide procedures for the resolution of bargaining impasses.

2. In those jurisdictions where there is no requirement to bargain, there is generally no provision for impasse resolution machinery.

   a. Exceptions
      (1) California (state, local, police, teachers)
      (2) Illinois (firemen)
      (3) Kansas (state, local, firemen, police)
      (4) Maine (state)
      (5) Nebraska (teachers)
      (6) New Mexico (state)
      (7) North Dakota
      (8) Oklahoma (firemen)
      (9) Oregon (teachers)
      (10) South Dakota (firemen)

F. In the federal Government, after involvement of FMCS, bargaining impasses go to the Federal Service Impasses Panel

1. The Panel institutes fact finding.

2. Then makes a Report and Recommendations.

3. The parties have 30 days to accept the Panel's recommendation, or to resolve the impasse some other way.

4. The Panel has authority to impose a settlement.

G. In the private sector, bargaining impasses unsuccessfully resolved result in strike or lockout.

NOTE: What's the situation in your jurisdiction?

Source:

"Summary of State Policy Regulations for Public Sector Labor Relations, February 1973, U. S. Department of Labor, Labor Management Services Admin., Division of Public Employee Labor Relations."

VIII. PUBLIC SECTOR STRIKES: USUALLY ILLEGAL

OBJECTIVE: To deal realistically with the issue of strikes in the public sector.

A. **Several recently enacted public sector collective bargaining laws deal directly with the strike issue, granting the limited right to strike to some employees.**

1. Alaska prohibits strikes by essential employees; gives a limited right to semi-essential employees; allows strikes by non-essential employees.

2. Hawaii grants to all public employees the limited right to strike. Strikes endangering public health and safety are unlawful. The Public Employee Relations Board (PERB) decides the legality of a strike and may petition court for an injunction against an unlawful strike.

3. Montana grants a limited right to strike to nurses. Striking is prohibited only if there is another strike in progress at another health care facility within 150 mile radius. Nurses must give health care facility 30 day notice and date of strike. .

   a. Montana law is silent regarding strikes by state and local employees, policemen and firemen.

   b. Montana teachers are prohibited from striking (unfair labor practice). The law provides for suspension of striking teachers without pay, dismissal plus loss of salary for each day of strike.

4. Pennsylvania grants the limited right to strike to certain public employees unless or until such a strike creates a clear and present danger or threat to the health, safety, or welfare of the public. Court determines whether a strike is such a danger.

5. Other states, such as Oregon, Minnesota and Florida have more limited rights in this area.

B. **In most other jurisdictions, strikes are prohibited for public employees. Examples:**

1. In Kansas, strikes by public employees are prohibited and are considered an unfair labor practice.

Subject Matter Content	Instructor Guidance
2. New York prohibits strikes and provides severe penalties:	
a. Striking employees may be placed on probation for one year without tenure. An amount twice the daily pay for each day of the strike may be deducted for each striking employee.	
b. Employee organizations may lose all representation rights and dues check-off for a period determined by PERB, which imposes penalties and fines enforceable by the State Supreme Court.	
3. In Ohio, the only legislation dealing with public employee collective bargaining is the no-strike Ferguson Act: Striking employees are to be terminated. They may be rehired with no compensation increase for one year; on probation for two years and serve without tenure if reappointed.	
C. The fact that strikes are illegal does not prevent them from happening	
1. Well-known Federal examples:	
a. Postal strike, 1970	
b. Professional Air Traffic Controllers, 1970	
2. Example: Ohio, 1970; 54 work stoppages in the public sector	**Source:** "Analysis of Work Stoppages, 1970," BLS, U. S. Department of Labor, 1972.
3. Because of increased militancy of public employees and their unions, we can expect more strikes.	
4. We can also expect other types of job actions, i.e.	
a. Demonstrations	
b. Sick outs, "blue flu"	
c. Slow downs	
d. Work-to-rules	

5. Public Sector management also faces the ever-present possibility of non-union militant group actions:
   a. Civil rights groups
   b. Women's rights groups
   c. Community groups

D. **Whatever the law says, management should maintain a strike prevention plan, the basic elements of which include:**

Teaching Material:
"Strike Prevention," CM IV-10

1. Equitable treatment - Maintenance of equitable conditions of employment for all employees. Fair administration and enforcement of established rules, laws, and regulations. Full disclosure of the terms, conditions, and obligations of public employment.

2. Good faith dealings - Utilization of the collective bargaining process to resolve disputes. Good faith negotiations and consultations with exclusive representative. Adherence to terms of the negotiated agreement.

3. Grievance system - An effective system for adjustment of grievances.

4. Communications - Open lines of communication between management, employees, and unions. Open lines of communication among management team.

E. **In addition, it is imperative that public sector management develop strike contingency plans, essential elements of which include:**

Teaching Material:
"Strike Contingency Plans," CM IV-11

Reference Material:
"Elements of Strike Contingency and Resolution Plans," RN IV-6

1. Continuity of service - Determine whether or how services will be continued. Determine what essential jobs and work will be done. How and where additional employees can be obtained.

2. Communications - Determine what kind and how much information will be released to the public. Establish effective communications within the management structure. Inform all employees of the issues in dispute and management's position on the issues. Be sure all employees know they risk disciplinary action for any violations.

Subject Matter Content

3. Security - Provide protection against possible violence on the picket line. Provide for protection of employees and equipment. Determine who will be permitted admission to agency facilities.

4. Pay policies - Determine when pay policies relating to a strike will be announced. Determine method for deciding who is sick and who is on strike.

5. Legal actions - Determine what legal steps can and may be taken. Explore possible use of injunction and its possible ramifications. Determine possible penalties for strikers and possible ramifications.

6. Throughout, management must keep in mind the goal — to resolve conflict — and the fact that the parties will have to be able to work together after the strike.

F. One of the messages of this course: The best way to prevent strikes is the effective use of the collective bargaining process.

Instructor Guidance

Unit IV Reference Materials:

– "Bargaining Preparations," **RN IV-1**

– "Tactics and Techniques of Collective Bargaining Negotiations," **RN IV-2**

– "The Scope of Negotiations," **RN IV-3**

– "Good Faith Bargaining - Private Sector Experience," **RN IV-4**

– "Regulations of the Federal Mediation and Conciliation Service," **RN IV-5**

– "Elements of Strike Contingency and Resolution Plans," **RN IV-6**

INSTRUCTOR GUIDANCE

FOR UNIT IV CASES

The following is guidance for teaching the cases in the previous unit. You may use the cases either to introduce a point or to summarize points already made. The shorter cases are best used to introduce a point which is then reinforced by the instructor with material from the Instructor's Guide. In all cases, participants should work within the framework of your jurisdiction's law.

CM IV - 1 "Selecting the Management Negotiating Team"

1. Chief spokesman:
    a. Authority and trust from top management
    b. Knowledge of department, laws, regulations
    c. Proper temperament

2. Other Members:
    a. Line Manager
    b. Budget - fiscal Manager
    c. First - line Supervisor
    d. Personnel/labor relations specialists
    e. Lawyer - possibly as a consultant

3. Depends on size of union team; 3-7 persons is a good range

CM IV - 2 "Authority to Negotiate"

1. Must have
    a. authority to conclude agreement
    b. authority to bind Management
    c. enough authority to have credibility with the union at the bargaining table

2. Obtain authority by:
    a. Establishing with top Management, prior to the start of negotiations, parameters on how far management will go on negotiable items.
    b. Setting management's position on non-negotiable matters.
    c. Define items over which management will go to impasse.
    d. Alerting top Management to what union demands are anticipated.
    e. Briefing executives throughout negotiations.

3. You need a personal and expedient communication system with management; in order for the Management Negotiating team to have credibility with the union, the Chief Spokesman must be able to confer with top management quickly, and receive answers from top management within a short period

CM IV - 3 "Collection of Bargaining Data"

1. See Unit IV - I C
2. Sources of information:
    1. Bureau of Labor Statistics publications
    2. Bureau of National Affairs - All management publications, especially *Government Employee Relations Report*
    3. Commerce Clearing House publications
    4. Prentice-Hall labor-management services

CM IV - 4 "Anticipating Union Demands"

Sources in addition to those listed above:
1. Union newspapers
2. Other union contracts in your area, including private sector
3. First-line Supervisors
4. Grievance file
5. Arbitration file
6. Record of past negotiations

CM IV - 5 "Ground Rules for Negotiations"

1. Definition of ground rules: procedural guidelines for conduct of negotiations

2. Ground rules encompass:
    a. site for negotiations
    b. times for negotiation: beginning and future sessions
    c. length of sessions
    d. caucuses
    e. procedure for exchange of proposals
    f. notetaking, observers
    g. impasses procedures

3. Ground rules are important because, in setting the rules by which both parties will abide, they set the scene for mutual understanding and trust in negotiations.

CM IV - 6 "Refusal to Select a Date"

1. Refusal to select a date by management **may be** an unfair labor practice if it is done with the intent to frustrate the union's negotiations effort. Dilatory tactics on management's part include refusal to select a date and constantly postponing a date agreed to by the parties.

2. Yes, this is an unfair labor practice. In effect management is saying "No I can't negotiate now, and I don't know when I can." It is a **per se** violation of the good faith requirement to meet at reasonable times and places. Management should either replace the negotiator or negotiate without him.

3. Postponing negotiations for a subordinate of a Negotiator is an even greater violation of good

faith than postponing negotiations for the illness of a Negotiator.

4. If the parties agree to negotiate, but the union refused to set a date, this is also a breach of good faith. The good faith requirement applies equally to both parties.
   If, however, the union does not ask to negotiate a contract, and management does not request that negotiations begin either, neither party is in bad faith.

CM IV - 7

1&2. Yes, the action constitutes bad faith. Submitting totally new proposals after a relatively long period of bargaining and unilaterally wiping out agreements already reached both constitute bad faith.

3. Yes, there is a difference. It is imperative that the ground rules state that agreement on specific issues is contingent on agreement on the entire contract. This leaves both parties room to bargain and make trade-offs on the last issues to be negotiated. In this context, changing agreement on single issues is not bad faith. Withdrawing all agreements previously reached is bad faith.

CM IV - 8 "Unilateral Management Action"

1. Yes, this action is an unfair labor practice.
2. It constitutes a breech of good faith because management has refused to consult with the union on an issue within the scope of bargaining (working conditions).
3. Refusal to bargain in good faith.

CM IV - 9 "Dealing Directly with Employees"

1. Yes, it's an unfair labor practice. Management is refusing to deal in good faith with the elected **exclusive** representative of employees.
2. Management, must on matters within the scope of bargaining, deal with employees **through** the exclusive representative. In this respect, management's ability to deal directly with employees is limited.

CM IV - 10

To answer this case, see Unit IV, VIII D.

CM IV - 11

Develop by guidelines given in Unit IV, VIII E.

TRAINING PLAN

COURSE TITLE: COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE & LOCAL)

UNIT TITLE: Negotiations (Simulation)

UNIT: V

TOTAL TIME: 15 - 20 hours or 4 - 5 hours

METHODS:
Simulation

TRAINING AIDS:
Negotiation Simulation
Videotape

Subject Matter Content	Instructor Guidance
I. INTRODUCTION	**OBJECTIVE:** To give the participants experience in the dynamics of negotiations.
A. This unit is comprised of two negotiation simulations	
1. Long (15 - 20 hours) – "A Public Employment Collective Bargaining Contract Negotiation: Midstate Department of Public Welfare" (CM V-1)	
2. Short (3 - 4 hours) – "A Public Employment Collective Bargaining Contract Negotiation: City of Alliance" (CM V-2)	
B. Depending on the length of the course, the instructor will choose one of these simulations for classroom use.	

Subject Matter Content	Instructor Guidance

II. LOGISTICS

A. Teams

1. Participants should be assigned to union or management teams. There should be 3 - 5 people per team. Assign each Management team to a Union team. Attempt to balance the teams by sex, race, experience, background, age, etc.

2. There should be a room with table for each Union-Management group (you may have several groups negotiating simultaneously). You will also need caucus rooms with privacy for each Union team and each Management team.

B. Planning Forms

You will need to reproduce an ample supply of planning forms (CM V-3). Each participant has one form in the Case Materials book, but each participant generally requires 5 forms - one for each issue on the table.

C. Videotaping Session

If you have videotape equipment available, you will want to videotape portions of the negotiating sessions to illustrate points during the critique. You can have negotiating groups alternate rooms so that each group gets videotaped.

D. Mail-out

You may want to mail out copies of Case Materials books prior to the start of the course and instruct participants to begin studying the situation and Data File before the course begins.

Subject Matter Content	Instructor Guidance

III. LONG SIMULATION: MID-STATE DEPARTMENT OF PUBLIC WELFARE

This simulation is designed to run for 15 - 20 hours. You will devote 4 hours to preparation, 8 hours to actual bargaining, and 4 hours to a critique of the bargaining.

A. Data for Participants and Instructor

1. Each participant has, in his Case Materials notebook, the following:

a. "Introduction and Procedure" and "Bargaining Issues" (CM V-1a) – These serve as an orientation to the situation for all participants.

b. "Union Proposals" (CM V-1b) and "Management Proposals" (CM V-1c) – Each participant has both sets of proposals. He is to assume that the parties exchanged proposals prior to the start of negotiations.

c. "Data File" (CM V-1d) – This material provides relevant economic and personnel data to be used by both sides.

2. Following this teaching outline, you will find the following material:

a. "Background Briefing" (TG V-1a) – This will give background on the purpose of the exercise, as well as background data on the situation in the simulation. The instructor should share this information orally with the participants.

b. "Union Profile" (TG V-1b) and "Management Profile" (TG V-1c) – These materials are included in the instructor's guide because the appropriate profile must be distributed to the participants. Union team members do not receive copies of the "Management Profile" and vice versa. Reproduce as many copies as necessary prior to beginning of negotiations. Allow participants to choose the role they will assume. The roles are not hard and fast; participants should feel free to improvise on the role assignments.

Subject Matter Content	Instructor Guidance

B. Time Frames

1. Period I – Preparations
   During the first hour of the period, the course director should do the following:

   a. Distribute the remaining appropriate simulation materials, giving Union Profiles to Union team members only; Management Profiles to Management team members only.

   b. Instruct participants not to allow opposite team members to see their profiles.

   c. Read and explain the introduction to the simulation which explains the objectives and restrictions of the game.

   d. Explain that only the bargaining issues reflected in the game are to be interjected into the negotiations. The participants are free to modify or combine the stated issues as they wish.

   e. Emphasize that each negotiating team must fully develop the information requested on the Planning Forms.

   f. Explain the time limitations to the game. For example, indicate that Period I – Preparation for Negotiation will run one-half day during which each team is to develop its objectives and strategies for the negotiations. Indicate the precise time when each negotiating team will meet its counter-part in a designated room to begin actual negotiations, which will continue for one complete day. If settlement is not reached by that time, then the participants are to assume that an impasse has been reached. Period III is to last 4 hours,at which time all participants are to meet in plenary session for a critique of the results.

Subject Matter Content

Instructor Guidance

g. Explain the role of the Instructor (Course Director). Indicate that Instructor will move from group to group to observe the negotiating process, VideoTape selected portions of the bargaining and to serve as a mediator when requested by either or both of the parties.

h. After the overall explanation to all the participants, break the participants into Management Groups and Union Groups so that they may begin their individual team preparations. The instructor should then move to each group to:

(1) Answer any general questions
(2) Indicate that the team members are to select the roles which they will assume during the negotiations.
(3) Indicate that role profiles are to be used as guidance, but not interpreted to preclude movement as negotiations proceed.

2. **Period II – Negotiations**

a. The Instructor should move from team to team, observing the negotiations.

b. The Instructor should also be preparing to video tape selected portions of the negotiations.

c. If desired by the parties the Instructor should be available to attempt to mediate the impasse (It should be remembered however that there is no requirement that an agreement be reached.)

d. If no agreement is reached, it can be assumed that an impasse has been reached, *(i.e. strike, fact finding, etc. as provided in the particular case).*

e. If the parties do reach agreement prior to the end of the day, they should be instructed to begin reducing the terms of their agreement to written contract language form.

TRAINING PLAN

COURSE TITLE: COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE & LOCAL)

UNIT NO. V

UNIT TITLE: Negotiations (Simulation)

Subject Matter Content	Instructor Guidance

3. Period III – Evaluation and Critique of Negotiations

a. The critique is conducted in a plenary session with the Instructor leading the discussion of the preceding events. The Instructor should cover the following areas, eliciting responses from each negotiating team.

(1) The team's assessment of its own strengths and weaknesses and those of its opposition.
(2) What objectives, strategies and tactics did the team employ and what affect did they have?
(3) If mediation was used, what affect did it have on negotiations?
(4) What was the value of using the Planning Forms?

b. Following this general evaluation, the Instructor should proceed to list in column fashion, the issues, positions and settlement of each negotiating team. For example:

	MANAGEMENT TEAM A				UNION TEAM A		
ISSUE	INITIAL POSITION	FALL BACK POSITION	FINAL POSITION	SETTLEMENT	FINAL POSITION	FALL BACK POSITION	INITIAL POSITION
Wages							
Length of time to maximum salary							
Vacations							
Stewards							
Productivity							
Grievance Procedure							

TRAINING PLAN

COURSE TITLE: COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE & LOCAL)

UNIT NO. V

UNIT TITLE: Negotiations (Simulation)

Subject Matter Content	Instructor Guidance
c. Play back of video tape (1) Replay the video taped negotiations (2) Instructor should elicit responses and self critique from participants (3) As appropriate, Instructor should offer his observations, comments and critique.	

TRAINING PLAN

COURSE TITLE: COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE & LOCAL)

UNIT NO. V

UNIT TITLE: Negotiations (Simulation)

Subject Matter Content	Instructor Guidance

IV. SHORT SIMULATION: CITY OF ALLIANCE

A. This simulation is designed to be run in approximately 4 - 5 hours. Allow participants approximately one hour to caucus and set strategy, tactics, etc., before bargaining begins. Again, you may wish to send out course Case Materials book in advance and direct participants to study the simulation in advance. You may also want to use videotape.

B. Data for Participants and Instructor

1. The "Negotiating Problem" (CM V-2), including union proposals and management proposals and all necessary data, is in the participant's Case Materials book.

2. Following this teaching outline you will find the following:

   a. "Instructions to Union Negotiators" (TG V-2a) "Instructions to Management Negotiators" (TG V-2b) – You will have to reproduce enough copies to distribute to participants. Naturally, union instructions go only to the union team, and the same is true for the management instructions. Instruct participants not to share their instructions with members of the opposite team.

   b. "Telegram" (TG V-2c) – The telegram is from the International Union to the Union team. If you feel that the negotiations have hit impasse you may introduce the telegram to the union team only.

   c. "Inter-Office Memorandum" (TG V-2d) – This item may also be used to break an impasse over wages. It is to be given to the management team only.

C. Critique:

1. **Follow critique plan given for the long simulation.**

A PUBLIC EMPLOYMENT
COLLECTIVE BARGAINING
CONTRACT NEGOTIATION SIMULATION:
MIDSTATE DEPARTMENT OF PUBLIC WELFARE (DPW)

U. S. CIVIL SERVICE COMMISSION
BUREAU OF TRAINING
LABOR RELATIONS TRAINING CENTER
WASHINGTON, D. C. 20415

TG V-1

U. S. CIVIL SERVICE COMMISSION
LABOR RELATIONS TRAINING CENTER

BACKGROUND BRIEFING

This is a simulated collective bargaining negotiation for a first contract between the public management of Midstate and a statewide bargaining unit of the American Federation of State, County and Municipal Employees (AFL-CIO), covering the Department of Public Welfare (DPW).

The bargaining takes place under a statewide law according exclusive bargaining rights to any labor organization chosen by the employees of an agreed upon bargaining unit of state or local government employees in a representation election conducted by the State Public Employees Labor Relations Board. Under the law, the employees have a limited right to strike after exhausting a complex mediation and fact-finding procedure which requires fact-finders to make recommendations for settlement of unresolved issues.

It is taken as a given fact that the union has won the collective bargaining election by a wide margin and that it has widespread support among the employees immediately involved. Since the results of the collective bargaining negotiation will affect almost all other state employees, there is great interest among those not represented in these negotiations.

All state management is equally concerned for similar reasons. The media within the state has already centered much public attention upon the negotiation and has commented editorially upon it. The state legislature, the business community and the state labor movement are following every turn of the contract talks.

This is the background against which the simulated negotiation will take place. The purpose of the simulation is not a simple business of winning for either the management or union, since, public impressions to the contrary, labor-management contracts are a matter of give, take, compromise and settle–even after a strike.

This simulation is designed to help provide management negotiators and staff representatives with knowledge of the problems that arise in public employment contract negotiations. It is intended to give participants a "feel" of the dynamics of collective bargaining, to broaden their knowledge and skills in the bargaining process and to assist them in preparing for and coping with the problems arising in contract negotiations.

The simulation seeks to recreate a "real life" bargaining situation although it is fully recognized that there is no substitute for the actual bargaining setting. It seeks to enable those participating to examine and evaluate their capabilities; their strengths and their weaknesses. It seeks further to permit participants to gain a realistic view of the bargaining process through critical examination of their roles in the simulated negotiations.

The task of those participating in this simulation is to develop a realistic concept of the bargaining process as it affects management's day-to-day relationships with employees and their union that fits within the framework of management's employee relations objectives. To this end, the major task of the participants will be to sift the available information, analyze the on-going problems on the basis of the information and to prepare for and negotiate the contract.

Both management and the union in these, as in contract negotiations generally, will seek to anticipate each other's arguments and prepare to counter them with facts, figures, political considerations and logic as each side sees fit. Each side will seek to probe for strengths and weaknesses and to grope for areas in which agreement can most readily be reached. The union, generally, will have some understanding of the limitations faced by public management, although it will rarely admit to such knowledge. Management, for its part, should have some understanding of the constraints placed upon union negotiators who must "make good" for their dues-paying members.

Because of time limitations, this simulation will focus upon five specific issues outlined in the following section on procedures. Within these limitations and those imposed by the process itself, this simulation seeks to provide participants with an orientation to and appreciation of the collective bargaining process; to help provide the skills by which participants can cope with and utilize the available information intelligently; to establish the basis for negotiating an agreement; and to require the participants to write appropriate contract language which says exactly what the parties have agreed upon.

This simulation provides the necessary background information. Some of it is useful, and some will weaken the position of either side if used. It calls upon participants to use the information as they see fit. It does not develop the arguments, since the object is to require the participants to do just that.

U. S. CIVIL SERVICE COMMISSION
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MIDSTATE DEPARTMENT OF PUBLIC WELFARE (DPW)

UNION PROFILE (For Union Team Only)

With the enactment of Midstate's Public Employee Relations Act, several unions actively began to organize the employees. The American Federation of State, County and Municipal Employees (AFSCME) was one of the first on the scene.

AFSCME seized upon the theme of job protection because of the change of Administration in state government, weak civil service protection and past mass turnover due to patronage. It chose as its first target the Midstate Department of Welfare (DPW) where a mixture of patronage and civil service practices prevailed. It petitioned for an election among non-institutional professional and nonprofessional employees of DPW and won by an overwhelming 14,000 to 2,200.

Immediately following the election, the new Administration sought to layoff some 500 nonmanagement patronage employees and to replace them with its own appointees. AFSCME filed an unfair labor practice charge on the grounds that its bargaining rights had been violated by unilateral management action. It was upheld by the State Labor Relations Board with the result that the laid off employees were reinstated and mass patronage layoffs were halted. Union prestige hit a new high and AFSCME gained considerable acceptance among employees of other departments as well as in DPW.

The bargaining unit won by AFSCME and for which it is now negotiating covers some 19,500 employees who serve nearly 900,000 welfare clients. These include Aid for Families with Dependent Children (AFDC) recipients, the aged, the infirm, a number of the working poor and some 35,000 unemployed persons supported by the state's own general welfare program.

Union structure has tended ot follow that of the Department. There are three AFSCME locals covering the non-institutional welfare employees in the bargaining unit. Local 1011, with headquarters in Eastburg, covers the eastern region and has a membership potential of 9,000. Local 1012, with a potential membership of 4,500, covers the central region and DPW headquarters employees and has offices in Capitol City. Local 1013, with headquarters in Westward, has a potential of 6,000 and covers the western region. About 60 percent of the employees are professional and the remainder are clerical and paraprofessional.

Each local has completed its initial organization. Each has an executive committee and is developing a steward system along management lines. The three locals are united for bargaining and other purposes in a statewide council.

Under council by-laws, each local president is a member of the state council executive board and of the union negotiating committee. Delegates to the council, elected from each local, name a fourth rank-and-file negotiating committee member. The AFSCME International Union Representative is the fifth member of the negotiating committee and is chief spokesperson for the union by common consent.

AFSCME needs "success" in the negotiations, both to build its welfare membership and to give its statewide organizing drive added impetus. It faces tough competition from the Teamsters, the Service Employees, the laborers Union, the Retail Clerks and other rivals.

UNION TEAM MEMBERS

AFSCME INTERNATIONAL REPRESENTATIVE–L. Karper

You are the AFSCME International Representative for state employees. You have worked for AFSCME for twelve years, starting as an organizer in the midwest. Before starting your union career, you were a moderate-sized city nonprofessional technician. You got started in the union by organizing city employees and becoming local union president. You are largely self-educated, although you completed two years of college through night courses. You now are 44 years of age and look to the union as a lifetime career. While there is always hope that you may some day be an elected international officer, you have no immediate ambitions in that direction.

You have a tremendous personal career stake in the outcome of these negotiations and subsequent organizing drives in Midstate. Nonetheless, you are a dedicated union staff representative and the welfare of the union and its members comes above all else. While you still retain the militancy which first brought you to the attention of the international union, that militancy has been tempered by years of experience. You are an experienced negotiator, having led negotiations in several key sets of contract bargaining. Particularly since this is the first round of negotiations for the welfare bargaining unit, other members of the union team look to you for guidance.

You want a settlement without strike or drawn out mediation and fact-finding if at all possible. You have cautiously sought to condition your fellow union negotiators to the idea of a peaceful settlement. You expect management to be reasonable and assume it knows that Midstate has not kept up in salaries and working conditions. You expect no miracles, however, and, are determined to obtain significant concessions. You will "go the route" if there is no other recourse.

PRESIDENT, LOCAL 1011–H. Barton

You are president of Eastburg Local 1011, a totally new experience since you never before have been a union member. You were elected president because of your activity in the successful organizing drive. You like the new recognition you get from both fellow employees and management.

You are a professional employee, a senior caseworker. You became active in the union because you felt salaries were too low, employee grievances were ignored, case loads were too great and morale was too low. You also resent the low repute to which welfare employees have fallen in the public eye. You sincerely want DPW to serve its clients well and, despite years of harsh experience, you have sympathy for the plight of most of those clients.

You want these negotiations to be concluded without too much acrimony, because you think that this will be best for the union and its members. You aren't saying that out loud, however, because you want to be known among your members as a fighter. Hopefully, as the local gains stability, yours will become a full-time union job offering a whole new career perspective.

Because yours is largely a big-city local, money is a very important issue with your members. You personally consider starting salaries disgracefully low. You will also resist any increase in the work load and, in your opinion, this is a striking issue–if there must be a strike. You hope that the new state administration, which came in on a wave of reform, will be fair. If so, you are ready to meet it part way.

PRESIDENT, LOCAL 1012–E. Mason

You are president of the central region local which includes DPW headquarters employees. You did not respond initially to union organizing efforts, but you became active as they gained momentum. You were elected president because you have a reputation for good sense and fairness. You took the job because you felt it was important, but you have no ambitions for a permanent union career.

You are a nonprofessional employee in the accounting department. Because your local includes DPW headquarters, it is the only one of the three with a majority of nonprofessional employees. You feel strongly that it is up to you to speak out for these employees during the negotiations.

While your views in general are conservative, you feel that management has not lived up to its obligation to treat employees fairly. You feel that the employees richly merit a substantial salary increase and that they have lagged behind others in the community. You are especially interested in a grievance procedure that will require management to hear and act on employee complaints. You also resent the patronage system which has affected clerical workers in greater degree than professionals.

You are ready to negotiate and will respond favorably to honest give-and-take negotiations. You don't like the idea of picket signs and strikes, but neither are you ready to be pushed around. You take your responsibilities to those who elected you very seriously.

PRESIDENT, LOCAL 1013–B. Billings

You have been a union member and shop steward in an industrial plant, although you now are a professional counsellor. You came up the hard way, working the evening shift in the shop while you gained your degrees. You know the union made a big difference in the shop, and that's why you joined the AFSCME movement early. You were elected president of Westward Local 1013 both because you knew what you were talking about and because, over the five years you have been employed in DPW, you have spoken out against unfair treatment.

You are not bombastic, however, nor do you believe in idle threats. While you would prefer a career in your profession, you would not be averse to a union career. You know your job will develop into a full-time post and you have half-a-mind to fill the job when that happens. You also know something about AFSCME and its career possibilities.

You don't have a great deal of faith in management's ability to end what you consider the bureaucratic mess in DPW. One of the reasons you became active in AFSCME is that you believe the creation of the union will do much to push management into line.

As a worker in the shop, you have experienced strikes and you know they are no picnic. You are ready to go that route, but only as a very last resort. You believe that the pressures on management to make the Public Employee Relations Act work will do the job this time.

Your first concern is a strong union. You know that you can't have it without winning a significant wage increase. You are determined, however, to push hard for a streamlined grievance procedure and to win concessions on the workload.

RANK-AND-FILE MEMBER–J. Justin

You are a chief steward in Local 1013, and were selected a delegate to the organizational conference of the statewide council. You are bitter at management and feel you have been unjustly passed up in promotions. You joined the union and helped in the organizational drive because of your personal grievance and your determination to get even. You were named to be bargaining committee because you were vocal in denouncing management and demanding better salaries and conditions.

You have never had previous union experience and look upon the union as an answer to almost every employee-relations problem. You see the union as a potential career route and have ambitions to become local president.

You intend to emerge from negotiations as a star negotiator, and you are determined to be the last to yield on issues. You want to hold out for the full salary increase sought by the union and you are aware that longer vacations are a highly popular issue with the members. You intend to let the folks back home know that you will not permit their negotiators to "sellout" the ranks.

ISSUE ORIENTATION

Pay: The union is serious in its demand on minimum pay. It will move under pressure on its demands regarding length of salary schedules. While it is determined to win a substantial wage increase and feels that it can justify its initial demands, it knows that it will have to meet management part way on this issue.

The union will maneuver and jockey to keep the pay issue open to the very last. Experience in other negotiations has taught the international that settlement on salaries weakens its position on other "gut" issues remaining unsettled.

Vacations: The union knows that management will make some concessions here in its initial offer on length of vacations. While it will continue to make noise on the length of vacations, it will buy most of management's offer in trade for concessions on other issues and has already decided on this course in its caucuses.

The union, however, wants at least division-wide seniority in choice of vacations and is convinced that management can grant all who want them vacations in the May through September period because of the increasing popularity of winter vacations. It is willing to accept transfers on a district-wide basis to fill-in for vacations provided management first asks for volunteers and the employee is not required to work outside his normal work assignment.

Productivity: The union does not expect to win its full demand on case loads, but wants management to move in its direction. It takes the position that smaller case loads will increase efficiency because it will mean better service for clients and fewer complaints that eat up the time of social workers and nonprofessional employees. The union also is serious about reduction of the clerical work burden on professional employees and the need to increase the number of paraprofessionals. It takes the position that concessions are vital to the creation of a more efficient DPW. Productivity could become the stickiest issue of all since management and the union are far apart in their basic positions.

Stewards: The union will compromise on excused time, but at a level considerably higher than that proposed by management. It also takes the position that management's proposed limitation on the number of stewards is too stringent and that its own demand for one steward for every branch chief is fair and reasonable in view of management's organizational structure.

Grievance Procedure: The union is willing to yield in some degree on time limits at each step of the grievance procedure but insists that a streamlined procedure of no more than four steps, including arbitration, is vital if employee complaints are not to pile up and cause bitterness. The union also takes the position that any unresolved grievance contributes to strained employee-management relations and that all should be subject to arbitration on their merits.

MIDSTATE DEPARTMENT OF PUBLIC WELFARE (DPW)

MANAGEMENT PROFILE (For Management Team Only)

Public welfare in Midstate is administered in its entirety by the Department of Public Welfare. The Department is headed by a Secretary who has one deputy for planning, one for administration, a Director of Employee Relations, and three regional deputies. There are also three Regional Employee Relations Managers. State welfare offices are located in 57 of the state's 62 counties, State headquarters and a central regional office are located in Capital City. A second regional office for the eastern area is located in Eastburg (pop. 900,000), the state's largest city. The third region serves the western area and is headquartered in Westward (pop. 550,000), the state's second largest city.

Welfare is Midstate's second largest public expenditure. To serve its caseload of nearly 900,000 persons (Aid for Families with Dependent Children (AFDC), the aged, the infirm, blind, working poor and state general relief), DPW utilizes a budget of $250 million of which $100 million represents the federal contribution.

Charges of welfare chisling and mismanagement have been hurled freely by the opposition party, some within the incumbent party and a number of taxpayer and conservative groups. These charges have been given great prominence in the media. While the State Administration has sought to check chisling and has found relatively little, its efforts and claims have fallen largely upon deaf ears. Because of the drum-fire attacks upon the Department, welfare employees generally are held in low public repute.

Each region of the Department is broken down into geographic divisions which, in turn, are subdivided into districts. Districts are then broken down into branches for purposes of geographic and functional operation. Supervising caseworkers and other supervising social workers have no power to recommend hiring and firing and are included in the bargaining unit.

Branch chiefs are considered first line supervision for purposes of the contract. District chiefs are second line and division superintendents represent the third upward step in the managerial chain of command. Division superintendents report to the regional deputy secretaries, but employee relations are handled at the regional level by a regional employee relations manager. Employee relations at the department level are handled by a DPW Employee Relations Manager.

The incumbent administration has included in its budget provision for salary increases and other employee benefits, but costs are an important consideration in the relatively tight DPW budget. Further, any increase in wages and fringe benefits negotiated for DPW noninstitutional employees will set a pattern for the 5,000 DPW institutional employees represented by AFSCME in a separate bargaining unit.

Even more important from management's viewpoint is the impact of the contract upon other still unorganized state employees. Having just won a tax increase, the Administration is determined to stay within the budget finally approved by the legislature. At the same time, the Administration does not want to alienate support from organized labor.

The Governor has turned over the conduct of the negotiations to his chief aide for employee relations, the Midstate Director of Personnel Policy who is chief negotiator for management. The Director has appointed as other members of his team the DPW Deputy Secretary for Administration, the DPW Employee Relations Manager, the DPW Budget and Finance Director and the Eastern Region Deputy Secretary.

MANAGEMENT TEAM

MIDSTATE DIRECTOR OF PERSONNEL POLICY–S. Bowen

You are an old hand at union negotiations in private industry, although this is your first experience in the public sector. You were appointed to your post because you gained a reputation as an able but enlightened negotiator for industry. You took your present post at some sacrifice in salary because the idea of public administration has fascinated you.

You have negotiated contracts with the Steelworkers, the Electrical Workers and other craft and industrial unions. You don't believe in union-busting, although you have experienced strikes. You feel that unions are worth their price because they bring a formal structure and clearly understood relationship to the workplace.

It is your desire that some of the employee relations practices that prevail in private industry shall become incorporated in state administration and you see the union as a level to this end. You have discussed this with the Governor. It has been approved.

You know the state must give in the current negotiations, but your object is to hold the giving within acceptable limits. You also want the "giving" to appear to be concessions so that you may save the union's face without losing your own. You are interested in gaining a reputation as an effective public administrator because you expect to return to private industry at a higher level when the present administration leaves office.

You have let your team know your goals, but you want them to feel they are part of the bargaining process. You expect them to contribute to the discussions by backing management's arguments with facts, figures and rationale. You are thoroughly equipped with labor market and other labor-management information to offset union arguments.

So far as the Administration is concerned, there must be no strikes in public welfare and you are confident that you can get a reasonable settlement at the bargaining table by astute negotiations. You have looked closely at union aims and you have guessed that the international union also wants peace.

You are ready to make concessions in such noneconomic areas as the grievance procedure, but you are determined that control of the workplace shall not be wrested from management's hands. You are also determined to hold down the number of stewards to a reasonable number and to prevent the steward system from becoming a means of "goofing off" on the job.

You are not averse to such strategy as trumped up disagreement in the management team to make it appear that there is weakness in areas where you are ready to make concessions. You know this can backfire and will use it only when you are sure the rest of the team can follow through.

DPW DIRECTOR OF ADMINISTRATION–S. Schulman

You are a long time career employee in DPW, having worked your way up from a clerical position. You are interested in a smoothly running organization and have tried to prevent overlap, duplication and bureaucratic bungling. No matter how you change the organizational tables, however, you have always seemed to run up against almost insurmountable administrative problems.

You are neither anti-union nor pro-union. You fear that the union will create new barriers to your administrative goals, that it will create time-consuming problems for management, protect inefficient workers and otherwise interfere with management prerogatives.

On the other hand, you know the union is here to stay and that the Administration wants accommodation with it. Your main concern is the steward system which you visualize as an attempt to share power. You want that system to recognize as vital every step in the management chain of command. You want no hasty answers on management's part and feel that there must be plenty of time within the process for management to consider all the consequences of its actions. You also distrust the arbitration procedure because you feel it takes needed authority out of management's hands.

By nature and habit, you are a team player and you recognize the superior authority of the Director of Personnel Policy. You will voice your disagreements privately, but will tend to go along, however reluctantly.

PW EMPLOYEE RELATIONS MANAGER–N. Grayson

You are the product of the School of Business at Midstate University. You are young, strong-willed and visualize yourself as a modern for contemporary society. You have taken courses in labor-management relations and want to put theory into practice.

Personally, you are glad to see the union on the scene. You feel that it is needed to modernize employee relations and shake up the bureaucracy. You know something about unions, although not from personal contact. You see them as a necessary employee voice in writing rules that both sides will understand and observe.

You see the advent of the union as upgrading your job in authority and importance. You know that you will play a major role in the resolution of key grievances. You know also that your office will be called upon to assemble data and to make decisions regarding contract interpretation.

Although you look upon the arrival of the union as an opportunity and challenge, you have no intention of playing its advocate within management ranks. You want a fair and workable contract to set the stage for new-style labor-management relations in DPW. You are bright, and you know it. You intend to make a meaningful contribution to the negotiations.

DPW BUDGET AND FINANCE DIRECTOR–M. Mullen

You are a facts and figures person and regard your role in negotiations as that of a technician. You believe that the main task of management negotiators is to hold down costs. You think that a small increase in salaries can be tolerated and may even be necessary, but that the union's demands are totally out of line.

You feel that your main contribution to the negotiations is to figure out costs and keep management informed of their impact upon the DPW budget. You feel also that your role in the negotiations is to speak up on facts and figures when requested by the chief negotiator.

You have never before had any experience in union negotiations and regard all unions with a measure of hostility. You believe also that management has a moral obligation to threat employees fairly and if this is done there will be no need for unions. Since the law now requires union recognition, you have resigned yourself to a new kind of employee-management relationship as a necessary evil.

EASTERN REGION DEPUTY MANAGER–M. Stanley

You are a long time employee of the Department and have worked your way up from case worker. You feel that you bring to the negotiations both an understanding of the employee's job and the practical needs of management at the operational level. You view yourself, in fact, as the representative of field management in the negotiations.

As a former caseworker, you understand why the employees voted in the union. You consider yourself a moderate liberal and see the union as a force for needed change within DPW. The problem, as you see it, is to keep change within acceptable limits.

You know the union will mean more problems for you and your subordinates, but you are ready to deal with those problems. You have no objection to a steward system, but want decided limits on the number of stewards and their time off the job for grievance processing. You feel that the steward system, under proper circumstances, can be a mechanism for good two-way communication between the employees and management.

You want a settlement without dragged out negotiations or excess bitterness to get the new relationship off to a good start. You recognize that there are costs that cannot be exceeded, but consider the primary objective to be settlement.

You also want to show the Director of Personnel Policy and the Governor that DPW field management is alert to changing times and conditions. Within the limits imposed by your position and overall management strategy, you intend to make a positive contribution to the negotiations.

ISSUE ORIENTATION

Pay: Because management is aware of employee dissatisfaction with the present salary structure, the union's need for stability and the need to make the Public Employees Relations Act work, it is willing to move up somewhat in its salary offer. Management is willing to come closer to the union's demand on minimum pay, but while it is flexible on the general salary increase its settlement figure is substantially lower than the union's demand. Management also is willing to move in some small measure from its original position on length of salary schedules. It regards all of these as direct cost items and wants to hold the total within limitations imposed by the budget.

Management would like to get the pay increase negotiated first. Its theory is that the bait of higher pay will bring employee pressure for settlement of other issues upon the union negotiators.

Vacations: Management is unwilling to make further concessions on vacations. It senses that it has moved as closely to the union position as it needs to go. Management will resist in particular the union demand for department-wide seniority and excessive limitations on its right to transfer to fill-in for employees on vacation.

Stewards: Management is willing to give in on excused time for stewards within reason. It is determined, however, to hold down the number of stewards because of case load needs. It is also determined that the steward system shall not be abused by employees who take the job to get out of regular work assignments.

Productivity: Management is adamant on work loads, basing its claim on past experience. It will never buy the union case-load demand, but takes the contrary position that productivity must rise. It recognizes that an excessive demand upon professionals to perform clerical chores detracts from productivity and is willing to move somewhat beyond its initial position. Because it sees the use of paraprofessionals as a means of holding down costs, it also has some flexibility on this issue.

Grievance Procedure: Management is flexible on the number of steps within the grievance procedure. However, it wants at least ten days for replies at each step so that higher management may have input in serious grievances at lower levels before they are blown out of proportion. Management also wants at least 45 days in which to complete arbitration proceedings to give it time for adequate preparation.

Management will not agree to arbitration of any grievance, but would limit arbitrations to alleged violations of the contract. It will insist that decisions be limited to the interpretation and application of the contract.

A PUBLIC EMPLOYMENT COLLECTIVE BARGAINING
CONTRACT NEGOTIATION SIMULATION:
CITY OF ALLIANCE

U. S. CIVIL SERVICE COMMISSION
BUREAU OF TRAINING
LABOR RELATIONS TRAINING CENTER
WASHINGTON, DC 20415

TG V-2a-d

INSTRUCTIONS TO UNION NEGOTIATORS

1. Older members of the union are demanding seniority in overtime in order that they may get their share of the extra money.

2. A high wage settlement is necessary in order to compete with the Teamsters who are negotiating with the other three municipalities.

3. Young members of the union want some type of job security against sub-contracting out.

INSTRUCTIONS TO CITY NEGOTIATORS

1. The Mayor has promised no tax increase.

2. The Mayor needs a two-year contract as he is up for election next year and does not want to be running for election at the time of the next negotiations.

3. The city must retain at all costs its right to sub-contract, in the event of metropolitan distribution of rubbish.

U. S. CIVIL SERVICE COMMISSION
LABOR RELATIONS TRAINING CENTER

TELEGRAM

TELEGRAM	X	WESTERN UNION TELEGRAM	FULL RATE	
DAY LETTER			LETTER TELEGRAM	
NIGHT LETTER			SHORE-SHIP	
		CHARGE TO THE ACCOUNT OF		
		THE INTERNATIONAL UNION		

MILWAUKEE, WISCONSIN

DECEMBER 27, 1971

NEGOTIATING COMMITTEE

CITY OF ALLIANCE UNION

STRIKE SITUATION BECOMES ALMOST IMPOSSIBLE DUE TO TWO REASONS: FIRST, THERE IS NO MONEY IN THE UNION TREASURY TO PAY STRIKE BENEFITS. SECOND, TEAMSTERS UNION MAKING ARRANGEMENTS TO RAID YOUR UNION IN THE EVENT OF A STRIKE SITUATION. THEY HAVE BEEN MOST SUCCESSFUL IN THIS TACTIC. IT IS, THEREFORE, IMPERATIVE THAT A SETTLEMENT BE REACHED WITHOUT A STRIKE. THE INTERNATIONAL UNION IS COUNTING ON YOU TO GET THE BEST POSSIBLE LABOR AGREEMENT AT THE HIGHEST WAGE LEVELS SO AS TO PROVE THE VALUE OF OUR UNION COUNTRY-WIDE.

PRESIDENT

THE INTERNATIONAL UNION

U. S. CIVIL SERVICE COMMISSION
LABOR RELATIONS TRAINING CENTER

INTER-OFFICE MEMORANDUM

DATE December 27, 1971

TO: City Negotiating Team

FROM: The Mayor

RE: ERROR IN BUDGET

Comptroller, by error, has found additional $700,000 surplus in budget. Press is aware of this and union may have heard. Must make settlement immediately as weather report indicates 5" snowfall at 5:30 p.m. this afternoon. Must have truck drivers to plow streets. Relying on you to save our flexibility in contracting out and to make a reasonably low settlement for two years.

Regards,

THE MAYOR

TG V-2d

U. S. CIVIL SERVICE COMMISSION
LABOR RELATIONS TRAINING CENTER

TRAINING PLAN

COURSE TITLE: COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE AND LOCAL)

UNIT TITLE: Contract Administration

UNIT: VI

TOTAL TIME: 4 - 8 hours

METHODS:
lecture, discussion, role play, case studies

TRAINING AIDS:
films, case studies, mock agreement, handouts

Subject Matter Content	Instructor Guidance
I. THE SCENE AT THE CONTRACT ADMINISTRATION STAGE	**OBJECTIVE:** To give participants a clear understanding of what is required for successful contract administration.
A. Union and management negotiators have agreed on the terms of a collective bargaining contract.	
1. Prior to implementation, other authorities may have to approve some part of the contract.	
a. Higher agency management	**NOTE:** Does your jurisdiction have to submit a contract to some higher authority? You may want to discuss in some detail the procedure, time limits, etc.
b. Legislature may have to approve funds for implementation	
2. The union will take the contract to its members for a vote of ratification. Generally, only members of the union who are also in the bargaining unit are allowed to vote on the contract.	**NOTE:** Does your jurisdiction require that all members of the unit be allowed to vote on the contract?
B. As soon as the contract is signed, ratified and approved, management, the union, and employees in the bargaining unit are bound by the terms of the agreement. The contract is legally binding on the parties.	
C. Implementation	**Reference Material:** "A Checklist of Actions Necessary for Effective Contract Implementation" (RN VI-1)
1. It is a good idea to emphasize the importance of the labor contract by having some sort of signing ceremony.	
2. Printed copies of the contracts should be available.	
a. The cost of printing and method of distribution are negotiable items. The union will, at a minimum, furnish all union members with a copy. Management should make certain that all members of the management team, and all employees in the unit, receive a copy.	
b. Two different sizes of contracts have advantages (1) Small, pocket - size: easy to handle (2) Large, with wide margins: convenient for keeping notes and records	

U. S. CIVIL SERVICE COMMISSION
LABOR RELATIONS TRAINING CENTER

TRAINING PLAN

COURSE TITLE: COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE & LOCAL)

Page 2

UNIT NO. VI

UNIT TITLE: Contract Administration

Subject Matter Content	Instructor Guidance
D. Film: Leadership: So Now You Have an Agreement	The film may be obtained from: National Audio Visual Center National Archives Services Washington, DC 20409

1. This film was produced by the U.S. Navy. It specifically refers to Federal Executive Order 10988, which was the first Executive Order on Federal labor-management relations.

2. The points the film makes, however, are not strictly applicable to the Federal sector. The film does a good job of summarizing many of the principles of contract administration.

3. Show the film.

4. Discuss the film. In discussion the following points should be made:

   a. The film shows the difficult position of first-line supervisors in labor relations.

   b. The film shows that no contract is perfect. From time to time the parties may have to interpret and apply amibigious language or negotiate language to cover specific situations.

   c. No issue in labor relations is isolated: the distribution of overtime may be related to training and to discrimination for union membership, for example.

   d. The film clearly shows the necessity of intramanagement communication. Only through intra-management communications can contract administration be uniform and consistent. This is an important concept for management.

   e. There are many other points which participants will bring out. Try to use the points discussed as a lead-in to the discussion of contract administration which follows.

U. S. CIVIL SERVICE COMMISSION
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TRAINING PLAN

COURSE TITLE: COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE & LOCAL)

UNIT NO. VI

UNIT TITLE: Contract Administration

Subject Matter Content

II. BASIC PRINCIPLES OF CONTRACT ADMINISTRATION

A. Contract administration is the stage of the collective bargaining process where the parties spend most of their time.

1. In administration, the contract becomes more than words on paper. The provisions of the contract vitally influence the day-to-day operations of government.
2. For the life of the contract, the parties must live by the provisions they have negotiated.

B. Management administers the contract; the union polices the contract.

1. In the collective bargaining process, management does not lose its right to manage. Rather, management continues to direct operations, under the agreed-to provisions of the contract.
2. It is the union's right and obligation to police management's administration of the contract, to represent the employees' interest, and make certain management abides by the agreements of the bargaining table.
3. The way in which management administers the contract can make or break the collective bargaining relationship.
    a. The first-line supervisor is of primary importance to contract administration. He directly applies contract provisions to his specific work situation.
    b. Although union and management agreed to contract language, each side is likely to have a different interpretation of what the language means in practice.
        (1) The supervisor, with guidance from other members of the management team, must interpret and apply contract provisions.
        (2) If the union disagrees with the supervisor's interpretation it will challenge him through the grievance procedure.

Instructor Guidance

OBJECTIVE: To give participants an overview of the principles involved in contract administration.

Reference Materials:
"Administering the Collective Bargaining Agreement" (RN VI-2)

"Areas of Management Concern for Effective Contract Administration" (RN VI-3)

NOTE: Ask: "Why is the first-line supervisor so important?" (This will be discussed in detail later)

NOTE: Ask for examples of contract language which might be interpreted differently by union and management. Examples: "reasonable time" for stewards to investigate and process grievances; "equitable" distribution of overtime. (This subject will be discussed in more detail later)

TRAINING PLAN

COURSE TITLE: **COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE & LOCAL)**

UNIT NO. VI

UNIT TITLE: **Contract Administration**

Subject Matter Content	Instructor Guidance
C. The keys to successful contract administration are uniformity and consistency.	**NOTE:** This is a key point and must be strongly emphasized.
1. Without uniform and consistent interpretation and application of contract provisions, management cannot hope to have a successful and harmonious collective bargaining relationship.	
a. If management does not have a uniform interpretation of contract provisions, there will be no stability in the collective bargaining relationship.	
(1) Without a uniform interpretation, supervisors may unknowingly give away in administration what the negotiation team refused to give away at the table.	**NOTE:** Ask for examples of how supervisors or other management officials might relinquish more than they are authorized.
(2) If two supervisors interpret a contract provision differently, the steward in the area where the provision is most narrowly interpreted will push his supervisor to adopt the more liberal interpretation of the other supervisor ("whipsawing").	**NOTE:** Ask for examples of contract provisions that might be liable to whipsawing. Example: "reasonable clean-up time."
b. If the management team does not apply contract provisions consistently, a flood of grievances and other labor relations problems are likely to result.	
(1) The union is especially alert to determine if the provisions of the contract are applied equally to all employees in all circumstances. If the supervisor does not do so, he is likely to have a grievance and even unfair labor practice charges filed.	**NOTE:** Ask: "How could this result in an unfair labor practices charge? Answer: If the supervisor applied the provisions of the contract unequally to union and non-union members.
(2) Once a supervisor determines what his interpretation of a contract provision is and begins to apply it (or to disregard its application) he is establishing a "past practice." Past practices, although they may never be reduced to writing, become, over a period of time, as strong as a written rule. If an arbitrator is called in to settle a grievance, he considers both the written provision and the past practice of applying it.	**NOTE:** A general example of past practice: An agency's work rules state that 3 days is the maximum time for the completion of job X. The agency never enforced the rule. Therefore, past practice (no time limit) rather than the written rule (3 day limit) becomes the rule.
(3) If application of contract provisions differs from supervisor to supervisor, the union is likely to try "whipsawing" supervisors into the most advantageous application.	

Subject Matter Content	Instructor Guidance

2. How can management achieve uniform and consistent contract administration?

   a. All members of the management team must know the contract

      (1) They must know what the negotiators agreed to - what was their intent, what did they refuse to agree to? By knowing the background of the negotiations, members of the management team have a better idea of what the intent of a contract clause is.

      (2) By knowing what the negotiators did not agree to, managers can avoid giving away in administration something that was rejected in negotiations.

   b. Members of the management team have the responsibility to communicate their understanding of the contract to the rest of management

      (1) This can be done through an annotated version of the contract *(i.e. a provision-by-provision written explanation of the background and intent of the contract).*

      (2) Perhaps the best way of explaining the contract is through direct training of the management team, especially first line supervisors.

         (a) Gives managers an opportunity to discuss vague contract provisions - "equitable" distribution of overtime, for example.

         (b) Gives managers an opportunity to discuss the application of the contract to their particular work situation.

      (3) Managers, especially first-line supervisors, should meet regularly throughout the life of the contract to discuss problems and share experiences. This also helps to maintain consistency and uniformity.

      (4) No first-line supervisor can be an expert on all aspects of labor relations; therefore there is a need for a strong agency labor relations function to provide advice and support.

         (a) This support function should be a strong link in the intramanagement communications system.

TRAINING PLAN

COURSE TITLE: COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE & LOCAL)

UNIT NO. VI

UNIT TITLE: Contract Administration

Subject Matter Content	Instructor Guidance
3. Management must avoid agreeing verbally with the union to do things which are different than the agreement, in violation of the contract, or not mentioned in the contract.	
a. Management can't count on union leadership to remain stable. If leadership changes, management can't count on new leadership abiding by a "gentleman's agreement."	
b. Therefore, management should stay as close to the written word of the contract as possible. (1) Contract is only changed through re-negotiating or arbitrators' decisions. (2) Management creates a "past practice" that doesn't conform to the contract.	**Case Material:** "Supervisor - Steward Relationships in Contract Administration" **(CM VI-1)**
4. No matter how carefully a contract is written, problems are bound to arise. No contract can cover all conditions and situations in the work environment.	
a. The grievance procedure is included to provide an orderly resolution of these problems.	
b. Sometimes, though, it may be necessary to amend a contract before it expires.	
c. Factors which might cause the parties to agree to amend the contract include: (1) Typographical errors (2) Accidental deletions (3) Legislation (4) Third party decisions (5) Management wanting to alter a personnel policy, practice, or matter affecting working conditions. Any such proposed change mandates dealing with the union. During the term of the contract, this is not something that is undertaken without thorough consideration of the advantages and disadvantages of such single issue negotiations.	

Subject Matter Content	Instructor Guidance

D. Contract Interpretation - The following are some situations which may arise, requiring management to work out a uniform and consistent interpretation.

1. Applying general contract language to specific situations. For example:

   a. Phrases that frequently cause problems:

      (1) "Reasonable" clean-up time.
      (2) "Just cause" for discipline.
      (3) Overtime distributed "equitably."
      (4) The "normal" workweek will be Monday - Friday.

   b. How would you go about interpreting such phrases?

      (1) "Past practice" - how they've been applied in the past.
      (2) History of bargaining:

         (a) Discussion of subject during negotiations.
         (b) Was the language intended to change a practice? If so, how?

      (3) More generally, do you want to read language broadly or narrowly?

         (a) In the "normal workweek" example (above), does the clause, by implication, give management the right to set some other workweek in "abnormal" or "emergency" situations?

            i. Which way would management be likely to argue?
            ii. Which way would the union be likely to argue?

         (b) Since contract terms usually involve restrictions on management, management is more likely to want to interpret language narrowly, while union is more likely to take a broad approach.

(c) The more general language you have, the more the possibilities for disagreement over meaning.
   - i. Disagreement not necessarily "bad."
   - ii. But where it exists, there's a need for a system for working it out.
   - iii. This is the primary function of the negotiated grievance procedure.

2. Interpreting ambiguous language

a. Can't avoid ambiguity, no matter how hard you try, even when the language is specific.

b. Example:
   - (1) Actual language from a public sector contract: "The assignment of overtime will be offered to the senior employee with the necessary qualifications who has the least number of overtime hours charged."
   - (2) Situation: Employee A has 10 years seniority and 10 overtime hours charged. Employee B has 3 years seniority and 3 overtime hours charged.
   - (3) Who is entitled to "first choice" at overtime (assuming both have the necessary qualifications)?
   - (4) The language can read either way.

c. Possible explanations for such language:
   - (1) Both parties agree on what they want to say, and therefore aren't careful about wording.
   - (2) Each may have a different meaning in mind, but not realize that they disagree. In this case, to interpret, an arbitrator might look at:
     - (a) Past practice.
     - (b) Bargaining history.
     - (c) The "reasonableness" of each interpretation.
   - (3) The parties may recognize the ambiguity, but agree to fuzzy language in order to temporarily resolve the issue so as to not block an overall settlement.

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3. Apparent Conflicts Between Contract Clauses

   a. The meaning of even the clearest language can be affected by language elsewhere in the contract.

   b. Example:

      (1) One clause reads:
      "Overtime will be distributed equitably among employees qualified to do the work required."
      Another clause reads:
      "The distribution of overtime will not be used to either reward or punish employees."

      (2) Situation: A Saturday overtime job requires the employee working the overtime to start work at an exact time; other employees can't start without him. Employee A has a record of consistently being tardy.

      (3) Assuming Employee A is otherwise qualified, can he be denied the overtime because of his tardiness?

         (a) Is promptness/reliability a "qualification"?
         (b) Would denial be a "punishment"?

      (4) An arbitrator might look at:

         (a) Past practice in applying the language.
         (b) Bargaining history.
         (c) Whether management has disciplined the employee for tardiness.

            i. The union might argue that management is using allocation of overtime as an alternative to discipline.
            ii. Management's case would be weak if it hadn't disciplined him.

         (d) How poor the employee's record actually is.

   c. Another example: A Management's Rights Clause

      (1) Many contracts have general clauses specifying certain "management's rights."

(a) For example, the following management's rights language must be in every Federal contract. " . . . management officials of the agency retain the right . . .

- i. to direct employees of the agency;
- ii. to hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees;
- iii. to relieve employees from duties because of lack of work or for other legitimate reasons;
- iv. to maintain the efficiency of the Government operations entrusted to them;
- v. to determine the methods, means, and personnel by which such operations are to be conducted; and
- vi. to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency . . .

(b) This is a strong management rights clause.

(c) Many state laws contain management rights clauses of varying strength

NOTE: Does your jurisidction have a management rights proviso?

- i. Hawaii – very similar to Federal clause
- ii. Minnesota – " . . . the employer is not required to meet and negotiate on matters of inherent managerial policy, which include, but are not limited to, such areas of discretion or policy as the functions and programs of the employer, its overall budget, utilization of technology, the organizational structure and selection and direction and number of personnel." (fairly broad management rights clause)

(d) If no state law exists, management will try to negotiate a management rights clause, preserving, at a minimum, the right to hire, select, retain, and promote candidates in accordance with merit principles.

(2) If management rights clauses were interpreted literally, virtually nothing could be put in contracts.

(a) A clause on distribution of overtime will limit management's right to "direct employees," for example.

(b) A clause specifying procedures or criteria for promotion will limit management's right to "promote employees."

NOTE: You will want to quote the provisions of your management rights clause here.

(3) But we do negotiate such clauses and many others.

(a) How do we interpret them in light of a management's rights clause?

(b) How do we interpret a management's rights clause itself?

(4) Some considerations:

(a) Most arbitrators give more weight to the more specific of two clauses when they seem to conflict.

(b) But the stronger the language in the management's rights clause, the greater the tendency for them to read other clauses narrowly – to cover only those situations specifically covered by the clauses.

d. Conclusion: People who administer the contract mustn't assume that the meaning of a particular clause is fixed, just because it seems clear.

4. Apparent Conflicts Between Contract Language and Higher Regulations or Laws

a. A particular problem in the public sector –

(1) For example, in Federal sector, EO 11491 (Section 11(a)) prohibits negotiations of labor contract terms which supercede laws, "outside" regulations, higher agency regulations, or a contract negotiated at a higher level.

(2) State and local jurisdiction don't have as many levels of authority, but most prohibit contract terms overriding laws.

NOTE: You will want to quote specific language of any applicable statutes.

b. Implications:
   (1) Must assume that contract clauses weren't negotiated with intent to supercede or conflict with laws or higher regulations.
   (2) But that means that to interpret and – therefore to administer – the clauses, you must take into account what authority management at the level of bargaining had to negotiate a particular provision.
   (3) To interpret contract clauses, you may have to interpret laws or higher/outside regulations:
      (a) To see what management is required to do.
      (b) To see what management is permitted to do.

E. What does "good faith" mean during contract administration?

Reference Material:
Good Faith Bargaining (RN III-2)

1. The concept of "good faith" dealings is applicable to the entire collective bargaining process, not just to the negotiations stage.

2. Even after the contract is negotiated, management will continue to meet with the union on matters appropriate to the scope of bargaining, especially if the contract is silent on the subject and the matter is within the scope of bargaining.

a. The parties may meet to make mutually desired changes in the contract.

b. Throughout the life of the contract, management must meet to negotiate any decision which concerns a subject within the scope of bargaining
   (1) The right to negotiate on matters within the scope of bargaining is an inherent right which flows to the union as exclusive representative. The fact that the contract is silent on a certain subject within the scope of bargaining does not mean that the union has waived its right to bargain on that subject. Unless there is a clear and unequivocal waiver of bargaining rights ***(i.e. "The union waives the right, during the life of this contract, to bargain on the distribution of overtime.")*** management must bargain its proposed change with the union.
   (2) Any proposed management decision which amends in any way a provision of the contract must be negotiated with the union.

c. Since the union has the right to bargain on any issue within the scope of bargaining, management should endeavor to establish a productive, consultative relationship with the union on all issues within the scope of bargaining

(1) Perhaps one of the best ways to establish this relationship is to have frequent, regular labor-management meetings to discuss current issues and problems.
(2) All members of the management team must understand the scope of bargaining, i.e. what is negotiable.

d. Many contracts contain a "zipper clause" (a general statement that the contract expresses completely the agreement of the parties, thus relieving management of negotiating on its decisions during the life of the contract).

(1) If the zipper clause does not represent a clear and unequivocal waiver of the union's right to negotiate, management is still obligated to negotiate.
(2) Both private and public sector experience indicates that the only really tight zipper clause is one that applies to a specific subject such as work assignments or overtime.
(3) An arbitrator will generally give more weight to the most specific contract clause. Consider this situation: Management, backed by a general zipper clause, makes and institutes a decision on distribution of overtime, a subject covered in the contract. The union maintains that the contract clause on overtime gives the union the right to negotiate any changes subsequent to the contract. If the union grieves, an arbitrator would look to the most specific clause - in this case, the clause directly relating to overtime.

F. Using a Contract

1. **Contract language is often not easy to understand or interpret. The purpose of this exercise is to give experience in applying contract language to specific situations.**

2. **Participants should use their own contract, if they have a copy. A mock agreement between the "State Revenue Service" and the "Government Employees Union" is included in the case materials (CM VI-2). All participants should use this agreement, as well as their own contract.**

Instructor Note: The teaching guidance for this exercise is included in the left-hand column.

Case Materials:
Mock Agreement (CM VI-2)
Cases (CMs VI - 3 - 9)

a. This agreement is a mock agreement, typifying many aspects of public sector contracts.

b. It is a modern agreement, not a model agreement.
   - (1) Draw participant's attention to important aspects of contract
     - (a) Management rights clause — Article 5
     - (b) Negotiated grievance procedure — Article 33, Section 7
     - (c) Concern for working conditions — case loads, number of adding machines, etc.

3. After participants have had a chance to look at the contract, distribute case materials (CMS VI - 3 - 9). You may want to select only certain cases or use all of them. Participants may work singly or in groups. The following is a list by title of the cases, the applicable contract provisions, and points to be made.

a. "Who Should Go" (CM VI - 3)
Answer: Article 12, Section 5
   - Follow promotion procedure if you determine that the training prepares employee for advancement.

b. "They're Doing the Job" (CM VI - 4)
Answer: Article 13, Sections 3 and 4
   - Required to promote
   - Required to keep the position description accurate.

c. "Preparing Her for the Job" (CM VI - 5)
Answer: Article 12, Section 3
   - Employer will give to all employees the training that manager deems necessary for performance of new job.

d. "A Balance of Sick Leave" (CM VI - 6)
Answer: Article 7, Section 9
   - An employee's accumulation of sick leave will not be a factor in ratings for promotion; key word is "accumulation." "Usage" may be considered under other factors such as dependability.

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e. "A Possible Reassignment" (CM VI - 7)
Answer: Article 28, Section 1
- No. Transfer and reassignments will not be used in place of discipline. (Can't give someone else your deadwood.) If an employee should be removed, manager should follow Article 31.

f. "A Prospect from Another Department" (CM VI - 8)
Answer: Article 7, Section 3
- Yes, applicant must compete under SRS Promotion Plan when the positions are in the unit.
- Management must use Merit Promotion Plan.
- Applicant can be selected if he's best qualified. If applicant ties with someone else, one with greatest SRS service gets the job.

g. "The Forgotten Promotion" (CM VI - 9)
Answer: Article 7, Section 14 - B
- You must make a yes or no decision based on your judgement as to whether he would have been selected had his name been on the earlier list of eligibles.

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III. THE SUPERVISOR AND THE STEWARD

The first-line supervisor is the employee most directly involved in contract administration. The supervisor is responsible for making collective bargaining and bilateralism work on a day-to-day basis. The union steward, by the same token, is the person most involved in policing the contract. It is vitally important that managers understand the role the union steward plays.

OBJECTIVE: To give an understanding of the role of the union representative.

A. **The union steward is the person in the union primarily responsible for making collective bargaining and bilateralism work on a day-to-day basis.**

1. Just as there are good and bad supervisors, stewards are of varying quality.

   a. Methods of selection

      (1) Election by members in unit
      (2) Appointment by union officers or the union executive board
      (3) It's a good idea for the supervisor to know which so that there can be an understanding of the political pressures under which the steward operates.

   b. Union members look for the following qualifications and characteristics when picking a steward.

      (1) Active union member
      (2) Strongly union oriented
      (3) Sincerely interested in helping others
      (4) Intelligent
         (a) Able to express self
         (b) Able to communicate with others
      (5) Knowledgeable

   c. Other factors may cause a steward to be chosen. Giving some thought to why a steward was chosen may help provide an insight into the steward's orientation.

      (1) Helped organize the union
      (2) Member of negotiating team
      (3) Personal popularity among members in bargaining unit
      (4) Political union payoff

d. Why does someone want to be a steward?
   - (1) Seeks higher union office
   - (2) Looks for status and recognition. May see such recognition as a road to management's recognition — and promotion
   - (3) Likes to help people
   - (4) Is a troublemaker; disgruntled employee
   - (5) The supervisor should give some consideration as to why a steward became one (motivation). This will often help the supervisor understand why a steward takes a certain action at a certain time.

2. An effective steward fulfills many responsibilities.

a. Represents employees in the unit
   - (1) Understands their problems, both work-related and personal
   - (2) Where possible, becomes involved in trying to solve those problems

b. Polices collective bargaining contract. (Does not administer the contract — that's supposed to be the supervisor's job.)
   - (1) Listens to employees' gripes, grievances and problems.
     - (a) Investigates them
     - (b) Processes them
   - (2) Enforces the contract by watching for violations.
     - (a) Investigates them
     - (b) Takes them up with management

c. Organizes and recruits new members.
   - (1) One of the steward's goals is to build majority membership in the bargaining unit.

d. Serves as a communications link:
   - (1) Between members and union officers
   - (2) Between the union and management
   - (3) Regarding union policy, union meetings and decisions, management policy and determinations

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e. Interprets and builds members' understanding of the contract.

f. Maintains constructive relationship between union and management.

g. Serves as first-line representative of the local and national union.

h. Collects dues where there's no check-off.

i. Acts and talks union.

j. Strives to attain dignity and justice for workers in the bargaining unit.

3. **Stewards are trained by their unions (ideally)**

a. Stewards are trained to know their contract.

b. They should also be familiar with department regulations, laws, ordinances, policies.

c. A steward should know his entire department.
   (1) Who does what
   (2) How the people get along with each other

d. Stewards are trained to be effective representatives.
   (1) They should know the grievance procedure backward and forward

e. Stewards are trained to be on the lookout for grievances and violations of the contract.

f. A steward should know the workers he represents.
   (1) Hiring dates (seniority)
   (2) Wage rates
   (3) Performance rating
   (4) Individual problems

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g. They are trained to be good listeners.
    (1) What is the employee's problem?
    (2) What does he want?

h. They are told, when in doubt, grieve.

B. Because of the jobs they have, there is bound to be conflict between the steward and the supervisor.

OBJECTIVE: To develop an understanding of the inevitability of conflict between supervisor and steward, and to enable the supervisor to deal with this in a positive way.

1. It is vital that each understands the responsibilities of the other so that this potential for conflict can be dealt with without hostility.

2. If there is an acceptance of the differences in orientation and responsibility, the supervisor and the steward can view each other as partners – because they are the ones who are constantly on the firing line in the bilateral labor-management relationship.

3. One obvious area for conflict is when the steward polices the contract

a. The steward's interpretation will favor the union and the workers.

b. The supervisor's interpretation will favor management – getting the job done, saving money, productivity.

NOTE: Stress that even though – by definition – conflict will exist between the supervisor and the steward, a mature relationship will also involve a great deal of cooperation and working together.

4. Other possible areas for conflict exist if the steward

a. Organizes on department time

b. Collects dues on department time

c. Conducts other internal union business on-the-clock

5. Because of his position, the steward may get closer to the workers than the supervisor can – which may bother the supervisor.

6. The steward has a responsibility to represent all employees in the unit, right or wrong. (Similar to a citizen's right to an attorney.)

Teaching Aides:
Instructor may want to use the cases here:
(1) Apparent Breakdown of a Good Relationship, (CM VI-10) and
(2) Management Responsibility v. Equality. (CM VI-11)

a. In a mature relationship, the steward will try to discourage grievances which he doesn't think are justified.

b. The supervisor should understand that such discouragement is not always successful.

7. **When not representing an employee, the steward must do his job just like any other worker.**

8. **But when acting in the capacity of the steward, that employee is equal in status to the supervisor; who must remember to treat the steward as an equal.**

C. The Supervisor and the Steward in Grievance Handling

NOTE: Grievance systems are discussed later in this unit.

1. **Most grievances are settled by the supervisor and the steward at the first step:**

a. A supervisor should never assume that a steward is not sincere in bringing a grievance, because his attitude toward the steward is normally reflected back in the steward's attitude toward the supervisor. This doesn't mean that he has to accept as true everything a steward has to say. The supervisor, though, must avoid discrediting the steward by telling him he does not believe what he has to say.

b. The supervisor's attitude should be: "It is my responsibility to see that the collective bargaining agreement is lived up to fairly and honestly. You have a grievance – let's look into the situation carefully to see what can be done about it."

c. In a grievance situation with the steward, the burden of proof is on him. When a grievance comes up the steward is in effect asking the supervisor to do either of two things:

(1) to take a specific action or
(2) to change a specific action already taken.

A good steward will talk to the supervisor to try to convince him.

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d. The supervisor should keep to the point, develop the facts, be sincere. If when discussing a grievance the steward either carelessly or deliberately attempts to carry the discussion into unrelated matters, the steward's attention should be called to the main point. Keeping to the point usually means the grievance will be brought to a successful conclusion soon. The steward should also be carefully questioned to develop the full set of facts. These facts and those that are developed subsequently through investigations are the basis for resolution of the grievance.

e. Before making a decision, the supervisor should investigate the facts of the specific situation and then check the experiences of others and possible pertinent precedents.

f. The supervisor should give the steward a chance to retreat from his original position. They both should consider the contract provisions, the common sense involved, the facts in the case, and the relevant precedents. The supervisor shouldn't forget that it is important to the steward that the employees feel he has done an aggressive job in presenting their case to management.

g. There is also the chance the supervisor may be reversed at a higher level. This might be for a number of reasons.

   (1) Additional factors might have been developed.
   (2) The supervisor might have slipped up in investigating the facts or in weighing the facts.
   (3) The supervisor might have misunderstood management's interpretation of the appropriate contract clause.
   (4) The necessity of changing a previously established policy might become apparent just at the time a particular case comes up for review.
   (5) The evidence is not sufficient to convince an arbitrator.

h. The final statement of a grievance is a precedent which can be used in settling other similar grievances. For this reason, the supervisor can make it easier for himself by checking the records. A good steward will do the same thing and certainly precedent can be cited for both sides on many questions.

i. Supervisors shouid try to keep informed regarding the outcome of current grievances and should call on the personnel and/or labor relations people for guidance.

Case Material:
"Allocation of Overtime"
(CM VI-12)

D. Film: The Union Steward and You
This film, produced by the U.S. Navy, is a bit dated in many ways. But its treatment of the appropriate relationship between the supervisor and the union representative is quite good. It's a good way to tie together the points of this unit.

The film may be obtained from:
National Audio Visual Center
National Archives Services
Washington, DC 20409

E. Conclusion

1. **The supervisor needs to know the collective bargaining agreement.**
   a. Should understand management's interpretation of its provisions.
   b. Should work toward uniform management administration.
2. **An effective supervisor understands the union steward system and accepts that it has value.**
   a. The duties of the steward
   b. Areas of potential conflict and cooperation
   c. Rights of and restrictions on steward
3. **A good supervisor works to develop a positive relationship with the union steward.**
   a. Works with the union, as opposed to working around it.
   b. Meets and confers with the steward with regularity.

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4. **A supervisor may involve the steward in assisting to resolve work problems.**

   a. Tardiness, absenteeism

   b. Formerly good worker not doing well

   c. Personal conflict

5. **A supervisor retains the right and responsibility to manage.**

   a. Doesn't panic or feel threatened when challenged by steward. (Understands that the steward's function is to challenge.)

   b. Understands the collective bargaining process and doesn't make side agreements with the steward. (Doesn't give away in administration what management didn't give in negotiations.)

   c. Participates as a member of the management team.
      (1) Participates in management decisions
      (2) Serves as a communications link up and down
      (3) Gathers information and documents problems in preparation for bargaining

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IV. GRIEVANCE AND APPEALS PROCEDURE

A. Most public sector labor contracts will have a negotiated grievance procedure.

B. Purpose of this session is to discuss:

1. Why we have negotiated procedures.
2. What is a negotiated grievance procedure?
3. Problems caused by the existence of other grievance and appeals channels.
4. Technical problems in processing grievances.
5. Implications for management of having and using a negotiated grievance procedure.

C. Film: "The Grievance" (The Hot Cab Case)

1. Purpose in showing the film:
    - a. Show what one procedure looks like.
    - b. Show purposes of a procedure.
2. Background information:
    - a. Produced by National Film Board of Canada.
    - b. Produced in 1950's, but not out of date (except for clothes and method of selecting arbitrator.)
    - c. Based on incident in private sector auto plant.
3. While viewing film, look for:
    - a. Possible differences between how the grievance in the film is handled and how it would be handled in the public sector.
    - b. What functions the procedure is serving.

Instructor Guidance

NOTE: More current and up-to-date films on public sector grievance processing and arbitration are being produced. Watch for announcements. They may be appropriate substitutes.

The film may be obtained from:
Contemporary Films
McGraw Hill
330 West 42nd St.
New York, NY 10036

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D. Functions of a Negotiated Grievance Procedure

1. Giving the employee a hearing

a. Sense of fairness

b. Assurance of "due process": ability to hold management accountable for living by terms of a negotiated agreement.

c. Often the fact that the employee can get a hearing is as important to him as the outcome of the grievance.

2. Channeling conflict

a. A way of taking steam out of situations without work disruption.

b. A way of identifying problems before they become too serious.

c. In private sector law, availability of a grievance procedure and arbitration is considered a quid pro quo for the union giving up its right to strike over disputes concerning contract terms.

3. Employee - Management Communication

a. A way for employees and a union to "catch management's attention."

b. A way of informing higher management of problems at the first-line level of supervision.

4. Communication within Management

a. A function that doesn't receive much attention.

b. Existence of the procedure puts pressure on management to improve internal communication and coordination, in order to:

(1) Avoid embarrassment of having to overturn incorrect decisions of lower-level managers.
(2) Insure that contract is interpreted and applied consistently.

Instructor Guidance

Instructor Guidance: This section can best be handled by first asking participants what functions the grievance procedure in the film served, then by discussing points as they are raised.

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5. All these functions relate to three others, usually considered the basic ones:

   a. Enforcement of Terms of a Contract

      (1) A way for employees and union to make management as a whole live up to agreed-to provisions.

      (2) As a general rule:

         (a) It's management's job to administer the contract.

         (b) It's the union's job to police it – through the negotiated grievance procedure.

   b. Interpretation of Contract Language

      (1) Too often we think a contract is self-explanatory.

      (2) Language can mean different things to different people, as we saw in the first part of this unit.

   c. Allowing the Union to Challenge Policies and Practices which Relate Directly to Employees.

      (1) In the private sector, the negotiated grievance procedure covers not only the contract but also all employee grievances. This is true in some states as well, especially those that have no state statute on labor relations.

      (2) In such cases, the union could grieve over matters not covered in the contract.

NOTE: Does your jurisdiction allow such broad grievance procedure coverage?

E. What is a Negotiated Grievance Procedure?

1. Quite simply, a negotiated grievance procedure is a system for considering employee grievances. Though the coverage of the system may vary, grievance procedures have several things in common.

   a. A series of "steps," with specified time limits, which allows the grievance to be considered at progressively higher levels of management.

b. The procedure covers all employees in the unit, whether or not they are union members.

c. No one outside the unit *(i.e. supervisors, management officials)* may use the grievance procedure.

2. **Here are some sample steps common to many grievance procedures.**

   a. First step: first-line supervisor and shop steward.

   b. Second step: Chief Steward and Department Manager or Personnel Officer.

   c. Third step: Union President and highest Department official.

   d. Fourth step: Union President or International Representative and Personnel Officer for entire jurisdiction.

   e. Fifth step: Advisory or binding arbitration.

3. **Since the procedure is negotiated by the parties, there will be many variations in the number of steps, the time limits between steps and the officials who review the grievance.**

   a. Some state civil service statutes or collective bargaining statutes do not allow the negotiation of binding arbitration for the settlement of grievances.

   b. If binding arbitration is negotiated, the arbitrator may be selected from lists provided by the Federal Mediation and Conciliation Service or the American Arbitration Association. Otherwise, the parties might agree to use the services of a local university professor or labor relations expert.

   c. The union will generally try to negotiate short time limits at each step. Management obviously would like to have longer time limits to give managers at each step more time to consider the grievance.

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F. The Negotiated Grievance Procedure and Other Grievance and Appeals Procedures

1. In the public sector, it is not unusual for the state, county or municipal personnel authority to have appeals procedures in operation for such matters as disciplinary actions appeals, job classification appeals, and performance rating appeals. In the Federal sector, for example, there are approximately 30 separate regulatory or statutory appeals procedures.

   a. Under the Equal Employment Opportunity Act, employees can appeal many personnel actions to the courts on the basis of discrimination.

2. If a state labor relations statute exists, there is very likely an unfair labor practice appeals system for either union or management to use if the other party committs an unfair labor practice.

3. It is easy to see how a single grievance might be covered by two or more grievance procedures.

   a. Example: Employee Smith, a black union steward, is given a ten-day suspension for what he claims was a trivial offense. He thinks the real reason he is being disciplined is that his supervisor is "out to get him" both because of his race and because of his vigorous prosecution of grievances for members of his bargaining unit. What procedure can he use to challenge the suspension?

Teaching Technique: Have this case written ahead of time on a flip chart or Vu-graph. Ask participants what grievance or appeals channels Smith might have open to him.

   b. Possible choices

      (1) EEO appeal – racial discrimination
      (2) Unfair Labor Practice – discrimination for union activity
      (3) Negotiated grievance procedure – contract probably contains "no discrimination" clause.
      (4) Agency or Civil Service appeals procedure – adverse action

c. Route the employee takes will depend on:
  (1) What aspect he chooses to stress
    (a) Either union membership or race
    (b) Management can't argue "we didn't discriminate against him because of union membership, we discriminated against him because of race."
  (2) Content of negotiated agreement
    (a) Does it cover suspensions?
    (b) Does it cover discrimination because of union membership?
  (3) Evidence for each charge
    (a) But this is for the employee to decide.

d. Managers must sort out different procedures and set policy on which procedures have precedence.
  (1) In the Federal sector, for example, statutory appeals procedures *(i.e. EEO)* must be used in precedence of negotiated grievance procedure.
  (2) The management team must know what grievance channels are available and appropriate, and how each procedure works.

G. Procedural Aspects of Processing a Grievance

Reference Material:
Sample Grievance Form
(RN VI-4)

1. The ideal situation is for the grievance to be settled at the lowest level

a. Increases mutual respect of the parties.

b. Gives employee quick solution to his problem, and saves management time.

c. Since both the steward and the first line supervisor are closer to the situation, they are likely to understand the problem better.

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2. However, many grievances won't be settled at the first level. The parties may be working with ambiguous contract language which must be clarified at a higher level. Or the supervisor may not want to back down on a decision he has made. Whatever the circumstances, management should follow certain guidelines for grievance processing.

   a. Each management official who reviews the case should make an exhaustive investigation of the situation and fully document the facts and management's position. If the grievance goes to arbitration, the arbitrator will give more weight to facts than to hearsay or opinion.

   b. Management must adhere strictly to the time limits provided in the contract. Contracts generally say that, if a time limit is not met by management, the grievance automatically proceeds to the next level.

   c. Management at some point must decide whether to settle the grievance or proceed to arbitration.
      (1) If the grievance is settled above the first level, lower level supervisory decisions are being overturned.
      (2) If the grievance goes to arbitration, a precedent for similar future cases is set by the arbitrator's decision.
      (3) If management settles all grievances at lower levels, management may be in danger of losing too much of its managerial authority *(i.e. giving the union everything it wants).*
      (4) Arbitration is expensive, at least $150 per day, plus cost of management and employee time.
      (5) This decision must be made on a case-by-case basis.

3. Other problem areas in processing grievances.

   a. What if an employee doesn't want the union as his representative?

Subject Matter Content	Instructor Guidance

(1) Does the law or labor contract permit an employee to use, in filing a grievance through negotiated grievance procedure, a representative other than the union?

- (a) Most laws or contracts allow the employee to use the procedure, but if he chooses not to have the union represent him, he can have no other person or group represent him.
- (b) The settlement in any case may not be inconsistent with the terms of the contract, and the union should be present or at least notified if any settlement is worked out.
- (c) Most contracts will require that the union be allowed to be present at all formal meetings and at the adjustment.
    - i. What is a "formal" meeting?
        - Was the meeting scheduled in advance?
        - Were minutes taken?
        - Were other members of the management team there?
    - ii. What is an adjustment?
        - If the employee drops the grievance, is that an adjustment?
        - The best policy is to include the union at any resolution of the grievance.

b. What if an employee wants his union representative present at an "informal" discussion, when no grievance has been filed?

- (1) Management can't tell employee when he can or can't have representation.
- (2) Employee has the right to representation. The union has the right to represent all employees in the bargaining unit.

H. Implications For Management

1. Grievance procedure can be helpful to management.
    - a. Giving the employee a hearing.
    - b. Channeling conflict.
    - c. Employee-management communication.
    - d. Communication within management.
    - e. Enforcement of contract terms.
    - f. Interpretation of contract language.
2. But there are many "gray areas" involved:
    - a. Often don't know what a contract means.
    - b. Overlapping jurisdictions among procedures.
    - c. Not clear when we must permit union officials to be present.
3. Two conclusions:
    - a. Management must coordinate its team's positions.
        - (1) Danger of undermining each other when dealing with grievance and arbitration cases.
        - (2) Inconsistency can often antagonize union and employees more than "taking a hard line" will.
    - b. Management must be willing to use procedure.
        - (1) Mustn't panic at threat of a grievance.
        - (2) It isn't "bad" to have a grievance brought against you when a situation is unclear.
            - (a) It's the union's job to challenge management when things aren't clear.
            - (b) It's management's job to defend its position if the principle involved is important.

Instructor Guidance: The purpose of this section is to summarize points already made and to emphasize the importance of a positive approach to grievances and grievance handling.

Stress that a grievance procedure is important because there may be more than one legitimate point of view on such questions. Important questions shouldn't be swept under the rug to avoid grievances.

Subject Matter Content	Instructor Guidance

(3) Advice that you should "always settle at the lowest level" can't be treated as an absolute rule.

- (a) If it were, management would have to give in whenever a union stood its ground.

(4) Example:

- (a) One factor which committees which evaluate performance of hospitals look at is the death rate of patients on operating table.
  - i. Look to see if rate is too high.
  - ii. But also look to see if rate is too low.
  - iii. Why?
  - iv. Hospital not taking chances on difficult cases, some of which will inevitably result in death. Hospitals must be prepared to take chances.
- (b) The same applies to management in handling grievances.
  - i. Having grievances brought against you — even losing some before an arbitrator — isn't necessarily "bad."
  - ii. Management isn't doing its job unless it's willing to take chances when important questions are involved.

Instructor Guidance: Relate this example to participants. Ask them if they understand why "too low a death rate" might indicate that a hospital isn't doing its job.

TRAINING PLAN

COURSE TITLE: COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE & LOCAL)

UNIT NO. VI

UNIT TITLE: Contract Administration

Subject Matter Content	Instructor Guidance
V. **ROLE - PLAYING A GRIEVANCE** **This exercise is based on the film "A Case of Insubordination?" The instructor's guide which comes with the film suggests a slightly different way of setting up the exercise. However, experience in using the film indicates that the procedure described in the following outline is more effective.**	The film may be obtained from: Roundtable Films 321 South Beverly Drive Beverly Hills, CA 94712
A. **Introduction** 1. **Purpose of Exercise:** a. To illustrate some of the problems in processing grievances. b. To illustrate problems involved in interpreting facts. c. To illustrate functions of union steward in processing grievances. d. To indicate some of the choices management must make in handling "border-line grievances".	**Instructor Guidance:** Since this unit consists of a role-playing exercise, most "instructor guidance" will be in the left-hand column, until Section V (General Discussion).
2. **Description of film:** "This case study is five films in one. The second, third, and fourth are subjective-camera simulations or views of the same incident as seen by an employee, a supervisor, and a witness. The first and fifth are an introduction and an analysis of the case by Dr. L. Dale Coffman, former Dean of the Law Schools at Vanderbilt and U.C.L.A. "The people involved in the incident are Joe, an older employee, and Frank, a young supervisor who is 2 levels above Joe. It is witnessed by Larry, a vending machine service man who is not an employee and, who happens to be in the coffee area where the incident occurs.	**Instructor Guidance:** The description at left is for the instructor's information. It should not be explained to class participants. **Teaching Material:** Film: "A Case of Insubordination?"

"From each subjectively simulated viewpoint we see that just as Joe begins his coffee break, Frank comes in and wants him to report right away to another foreman in the same department to do some temporary work. Joe, however, gives several reasons for not wanting to go, although he doesn't come right out and say that he refuses. Instead, he says that he's waiting to collect his winnings on the World Series "pool." This complicates the encounter, since it raises the question of gambling on the employer's premises. Joe also claims that it would mean working in a lower job classification, and he doesn't like to do "that kind of dirty work anymore." Besides, he is right in the middle of a high-priority job for his present foreman. As Frank tries to answer these objections, the argument builds to the point where tempers flare, and a Coke bottle gets knocked to the floor. The scene ends with Joe accusing Frank of using physical force on him, and Frank accusing Joe of insubordination for refusing to obey a legitimate order."

3. Advance Preparations

   a. Assigning Roles

      (1) Split the class into groups of five, with one member of each group playing each of the following roles:

         (a) The Employee (Joe)
         (b) The Supervisor (Frank)
         (c) The Witness (Larry)
         (d) The Union Steward
         (e) The Department Manager

      (2) Have enough role assignments prepared for each role.
      (3) Put on a chalk-board or flip chart the group and role assignments of each participant.

   b. Room Arrangements

      (1) Have enough break-out rooms and/or large enough rooms for each group to function independently.

Instructor Guidance: The steps at left must be taken before the class session. If the class can't be divided evenly into groups of five, assign some participants to act as co-stewards.

NOTE: Participants who play the role of witness will not have much to do once they have been interviewed. You may want to assign this role to someone who isn't a class participant (but probably not yourself: you have too much "objective" information!)

Instructor Guidance: Other considerations in assigning roles: (1) Don't assign someone who is especially passive to play the role of steward or manager. (2) If a particular participant is especially hostile to unions assign him or her the role of the steward.

Subject Matter Content	Instructor Guidance

- (a) Steward and Employee, Department Manager and Supervisor should be able to talk with each other without being overheard by the other two.
- (b) Whole group should be able to conduct a grievance discussion without interfering with other groups' discussions.

(2) Assign each group to a room or portion of room.

(3) Have projector set up in a room other than your main meeting room.

c. Setting Up Film

(1) Run film through the first part (introduction by Dr. Coffman) before class.

(2) The second part (role of the employee) should be ready to be shown.

4. **Explanation to Class**

a. Purpose of exercise (A.1. above)

b. Assignments

(1) Note group and role assignments on board or flip chart

(2) Distribute appropriate role assignment to each participant (CMS VI 13 - 17)

- (a) Give participants an opportunity to read
- (b) Ask for questions

c. Procedures

(1) The film:

- (a) "Employees" will see first, while others remain in main room (about 5 minutes)
- (b) Then "Supervisors" by themselves (about 5 minutes)
- (c) Then "Witnesses" (about 5 minutes)
- (d) Union Stewards and Department Managers won't see any of the film.

Teaching Material:

1. "Role of Employee" (CM-VI-13)
2. "Role of Supervisor" (CM-VI-14)
3. "Role of Witness" (CM-VI-15)
4. "Role of Union Steward" (CM-VI-16)
5. "Role of Department Manager" (CM-VI-17)

Instructor Guidance: If at all possible, avoid noting that participants will be seeing different films. Let them find out for themselves.

(2) Investigation of the grievance:
   (a) "Employee" talks with "Steward," while "Supervisor" talks with "Manager."
   (b) "Witness" makes himself available to both "Steward" and "Manager" for questioning.
   (c) Should spend no more than 45 minutes investigating the grievance.

(3) Processing the grievance:
   (a) "Manager" and "Steward" are responsible for handling the discussion.
   (b) Should decide by end of meeting whether to settle the grievance (and if so, on what terms) or to send it to next higher step.
   (c) Should take about 45 minutes.

(4) Whole class will discuss results after groups finish processing the grievance at this step.

(5) Everyone will see the film after the discussion.

B. Showing The Film

1. **Have each set of participants playing roles of "Employee," "Supervisor," and "Witness" see their portion of film in turn.**

2. **Have those not viewing the film at a given time read Reference Material on grievances.**

3. **Once "Witnesses" have seen their portion:**

   a. Have film rewound to beginning

   b. Set up projector in main classroom for viewing at end of session

C. Breaking Into Groups

1. **Additional instructions to participants:**

   a. "Steward" and "Manager" should decide how much time to spend questioning their respective "constituents," and how much to spend questioning witness.

Subject Matter Content	Instructor Guidance

b. Members of each group should stay in same area (especially the "Witness"), when not being questioned. If someone takes a break, he/she should let others know.

2. **Points to reinforce:**

a. There are two grievances on the table:
   (1) Frank has charged Joe with insubordination.
   (2) Joe has charged Frank with use of physical force.

b. Must deal with both issues and decide if you can resolve them.

c. Be prepared to say why you can't resolve them if you don't settle, what the terms of settlement are if you do.

3. **Each group goes to its appointed room or area.**

D. While Participants Are In Small Groups

1. **Don't answer questions concerning facts of case.**

2. **Rewind film.**

3. **You may want to let "Managers" and "Stewards" discuss the grievance without the "Employee" and "Supervisor" present.**

a. Advantage: You will be able to contrast settlements where they were all together with those where "Employee" and "Supervisor" were absent.

b. Disadvantage: Those absent will have nothing to do for long periods.

c. Possible "middle ground": Have those who viewed the film sit in on discussion without participating.

d. Let each group decide whether the "Employee," "Supervisor," and "Witness" should participate in the discussion; don't instruct them not to.

Instructor Guidance: If you decide not to permit the "Steward" and "Manager" to exclude the other three from the grievance meeting, note that their role description sheets (CM-VI-16 & CM-VI-17) indicate that they may do so. You will have to change the sheets if you don't want them to have that discretion.

Subject Matter Content

4. Warn groups when first 45 minutes, second 45 minutes are about up.

5. Spend time with each group once they've started processing the grievance.

E. General Discussion

1. How did each group do?
    a. Did they settle?
    b. If so, on what terms?
2. Issues involved in the grievance
    a. Was this a case of insubordination?
        (1) Was an order given?
            (a) Was it clear that it was an order?
            (b) Did Supervisor give the impression that he was making a "request" which Employee could refuse?
            (c) Did discussing Employee's objections undermine the strength of the order?
        (2) Did Employee refuse the assignment?
        (3) When may an employee legitimately refuse an order?
            (a) If obeying would reasonably pose threat to his/her
                i. health
                ii. safety
                iii. morals
            (b) Some arbitrators add: if obeying would require the employee to break a law.
            (c) Otherwise, arbitrators generally hold it against an employee who refuses an order even if the order is later found to be wrong *(for example: unfair, discriminatory, or in violation of a contract)*
            (d) General rule: "Obey first, grieve later"

Instructor Guidance

Instructor Guidance: Before getting into a general discussion, list on the board whether or not each group resolved the grievances, and if so, on what terms. The additional questions at left are meant to raise issues and stimulate class discussion. Class members will probably mention all of the issues noted at left without you raising them. Be sure to distinguish between factors which represent poor management practices only and those which might justify the Employee's actions in the film. There are no "correct" answers to the fact questions at left: that's one of the points of the exercise.

Subject Matter Content	Instructor Guidance

(4) Factors which may have been poor management practices, but which don't justify insubordination:

  (a) Going out of the chain-of-command to give employee an order.
  (b) Assigning an employee work out of his job classification.
  (c) Assigning an employee work while he is on an authorized break.
  (d) Imposing discipline on the spot
    i. May make poor judgements "in the heat of the moment."
    ii. If imposed later, discipline appears less arbitrary, more considered.
    iii. Some contracts actually prohibit on-the-spot discipline.
  (e) Losing one's temper.

b. Use of physical force

(1) Was force used?

  (a) Testimony of witness makes it questionable.
  (b) But employee will react to what he thinks happened.
  (c) Extremely dangerous for supervisor to ever touch another employee.

(2) Would use of force justify refusal to obey?

  (a) In this case refusal came before touching.
  (b) An arbitrator not likely to consider as "mitigating factor" unless force used before refusal.

(3) Should use of force be treated as a separate issue, or as part of issue of insubordination?

  (a) Not whether an arbitrator would treat them as one or two issues, but whether parties want to.
  (b) Treating them together might lead to settlement (dropping both charges)
  (c) But is the object just to "resolve" the immediate situation?

Subject Matter Content	Instructor Guidance

            i. Management's authority to give orders might be undermined in the future.
            ii. Supervisor might not recognize the importance of not touching employees.
        (d) We'll return to this point later.

3. Procedures in handling grievances

a. Investigation of the grievance

(1) Too often we overlook the importance of thorough investigation.

Instructor Guidance: Ask class members the questions at left.

(2) How many "Managers" and "Stewards" learned of facts during grievance discussion that they hadn't learned in questioning "Employee" and "Witness"?

(3) How many "Witnesses" were asked questions by one side that they weren't asked by the other? Did that have an effect on grievance discussion?

(4) Not a question of "failure" of those who saw the film:

- (a) Participants may be "too close" to what happened to recognize important points.
- (b) Since they have a "whole picture" in mind, they might not realize what they haven't told you.

(5) Investigation involves trying to anticipate other side's arguments and points of view.

- (a) Did "Managers" and "Stewards" try to do so?
- (b) Did they have responses ready?
- (c) Did each recognize the weaknesses in his own case?

(6) Did "Managers" and "Stewards" have some idea of what sort of settlement they would agree to before they got together? What are the pros and cons of doing so?

- (a) Pros:
    - i. Provides a sense of direction to discussion; not aimless conversation or debate.
    - ii. Puts focus on conflict resolution.

(b) Cons:
- i. May lead to inflexibility.
- ii. May divert attention from importance of the general issues involved.

b. Presence of participants when representatives are discussing a grievance

(1) Did it affect the outcome in the groups (if some excluded the participants and others did not)?

(2) Is it advisable to exclude those directly involved?

(a) Pros:
- i. Participants may inject emotions, divert attention from "objective" issues.
- ii. Representatives might "play to the grandstands", be less willing to admit weaknesses in their own case.

(b) Cons:
- i. Participants might not accept eventual settlement, leaving underlying problems remaining.
- ii. Participants might feel they have been "sold out" if they don't understand why their representatives compromised.
- iii. May be able to get more facts if those directly involved are present.

(c) Unions generally insist on employee being present, unless:
- i. There is a good chance of participants getting violent; or
- ii. Employee is so timid that he might be "cowed" into submission by questions.

Instructor Guidance: Let participants answer the question. Ask them why a union official generally wants the employee present. You may also note that some labor agreements actually specify the steps at which the employee may be present and those at which the union meets with management without the employee present.

4. Perceiving facts

a. Introduce the subject after showing the entire film to all class members.

Instructor Guidance: Show the entire film over again to the whole class at this point. Then ask the questions at left.

Subject Matter Content | Instructor Guidance

b. Were the differences between the three depictions unreasonable?
    (1) No
    (2) They weren't that far apart.
    (3) They got farther apart as participants got more heated.

c. Most situations usually will involve ambiguity, differences of opinion (just as questions of contract interpretation do)
    (1) Arbitrators have to decide most questions of fact on the basis of "preponderance of evidence"
        (a) Generally, the severer the discipline, the greater burden on management to prove its case
        (b) Again, this illustrates the importance of careful preparation/investigation.

d. NOTE: Steward is most important to the employee in border-line cases
    (1) Discussions may seem bitterest when you think you're in the right.
    (2) Don't take it personally; it's the steward's job to take the employee's side when he thinks there's any chance of making a case.

5. **Implications for management:**

a. Don't mean to say that management must give in (or even seek to compromise) when fuzziness involved.

b. Processing grievances can serve several functions:
    (1) Easing tensions
    (2) Resolving immediate problems
    (3) Identifying general problems and issues
    (4) Communicating points of view

c. But the process involves trade-offs:
    (1) Being too anxious to ease immediate tensions (to "settle") may lead you to avoid dealing with general problems

COURSE TITLE: COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE & LOCAL)

UNIT NO. VI

UNIT TITLE: Contract Administration

Subject Matter Content	Instructor Guidance
(2) Insisting on broad principles or points of view may make it hard to settle the immediate grievance, and may even increase tensions d. There is no "one best way" to handle grievances (1) Must decide how you want to use the system at any particular time. (2) Must be aware of the trade-offs.	**Reference Material for Unit VI:** A Checklist of Actions Necessary for Effective Contract Implementation (RN VI-1) Administering the Collective Bargaining Agreement (RN VI-2) Areas of Management Concern for Effective Contract Administration (RN VI-3) Good Faith Bargaining (RN III-2) Sample Grievance Form (RN VI-4)

INSTRUCTOR GUIDANCE

FOR UNIT VI CASES

The following is guidance for teaching the cases in the previous unit. You may use the cases either to introduce a point or to summarize points already made. The shorter cases are best used to introduce a point which is then reinforced by the instructor with material from the Instructor's Guide. In all cases, participants should work within the framework of your jurisdiction's law.

CM VI - 1 "Supervisor-Steward Relationship in Contract Administration"

Don't give the steward a clipboard

a. Loss of effective control over work situation because Ralph is left to determine his own work priorities.
b. Impact of clipboard as a precedent which could later be used to disadvantage of management. (All the stewards will want one.
c. Don't give away in administration what wasn't given in negotiations.
d. Paul should appoint someone to "act" in his absence.
e. Perhaps management will want to recommend that an additional steward be appointed/negotiated.

CM VI - 2 is the contract

CM VI - 3 thru 9 answers are included in the Instructor Guide.

CM VI - 10 "Apparent Breakdown of a Good Relationship"

Find out:

a. What pressures the steward is under
b. If the grievances have anything in common
c. If other supervisors have the same problem
d. If you have in some way alienated the steward

What should you do?

a. A hard-and-fast rule is: Managers should **never** become involved in internal union politics.
b. Maintain your end of the good relationship. Handle grievances, even if they are unjustified, promptly, fairly, and by the book.
c. Control the steward's use of official time strictly by the contract. Remember he may be electioneering, not settling grievances. Use whatever safeguards the contract gives you, but don't try to go any further.

CM VI - 11 "Management Responsibility v. Equality"

a. The steward is the supervisor's equal.
b. Time spent in resolving grievances is to management's benefit.
c. The supervisor antagonized the steward unnecessarily. Contracts generally reserve to Management the right to keep the Steward from leaving if the Steward genuinely can't be spared because of work. However, here the supervisor is just telling the steward he can't leave—not because of work, but because he suspects the steward is recruiting.
d. The supervisor should use whatever controls the contract gives him. However, he should use them fairly and without prejudice to the union.

CM VI - 12 "Allocation of Overtime"

1. Paul must make Nancy realize that the contract is binding in all circumstances absent the most extreme emergency. Perhaps the best course is to consult with the union and try to work out a compromise that will allow Nancy to get the work done, and still abide by the contract. Perhaps union and management could agree that overtime would be assigned equitably over the period of a year, thus giving Nancy the leeway she needs in the present situation. If such a solution is not worked out, Nancy must live by the contract. Pragmatically, arbitration costs could almost equal the cost of assigning O'Farrell overtime.

2. Certainly, management must abide by the contract. It is legally binding on both parties.

3. If management takes the course proposed by Nancy, the bilateral relationship will be damaged. Management risks getting an arbitrator's decision that is harder to live with than the contract. The parties should attempt to work out a decision which suits their needs and the situation. In actuality, a case such as this one is an opportunity for the parties to strengthen their relationship.

CM VI - 13 thru 17 are role descriptions for use with film "A Case of Insubordination"

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TRAINING PLAN

COURSE TITLE: COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE & LOCAL)

UNIT TITLE: In-Basket Exercise

UNIT: VII

TOTAL TIME: 4 hours

METHODS:
Inbasket exercise

TRAINING AIDS:
Inbasket exercise (CM VII-1)

Subject Matter Content	Instructor Guidance
I. INTRODUCTION The purpose of this in-basket exercise is to give participants an idea of how labor-management relations can impact on the day-to-day operation of government. It also summarizes many points made in the course.	

TRAINING PLAN

COURSE TITLE: COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE & LOCAL)

UNIT NO. VII

UNIT TITLE: In-basket exercise

Subject Matter Content	Instructor Guidance
II. TIME FRAMES A. The participants are to be given one hour and fifteen minutes to go through the exercise. B. The rest of the four hour period is to be used in a plenary session, going over participant's answers.	

TRAINING PLAN

COURSE TITLE: COLLECTIVE BARGAINING FOR PUBLIC MANAGEMENT (STATE & LOCAL)

Page 3

UNIT NO. VII

UNIT TITLE: In-basket exercise

Subject Matter Content	Instructor Guidance
III. INSTRUCTOR GUIDANCE	
A. You may wish participants to work individually or in small groups of 3 - 4. Either way works fine.	
B. You will find that many problems raised in the exercise require you to draw on your knowledge of your jurisdiction's labor relations law.	
C. Each participant has a copy of the "Inbasket Exercise" (CM VII-1) in his Case Materials book. Following this teaching outline, you will find a copy of the "Inbasket Exercise" (TG VII-1) with general guidance given for each item.	**Case Material:** "In-basket Exercise" (CM VII-1)
D. After you have discussed each item with the students, have them draw general points from the exercise.	
1. Need for uniform and consistent contract administration.	
2. Need for management interpretation of ambiguous contract language.	
3. Need for training management officials in labor relations.	
4. Need for department policy and philosophy on labor relations.	

INSTRUCTOR GUIDANCE FOR UNIT VII

IN-BASKET EXERCISE

U. S. CIVIL SERVICE COMMISSION
BUREAU OF TRAINING
LABOR RELATIONS TRAINING CENTER
WASHINGTON, DC 20415

U. S. CIVIL SERVICE COMMISSION
LABOR RELATIONS TRAINING CENTER

Memorandum

Subject: Administrative time for stewards

Date:
In Reply Refer To:

From: Perry Stewart
Pers Off, OMS

Your Reference:

To: Jane Anderson
Labor Relations

Sid Owens, the union steward in the Inter-Office Mail Branch, is beginning to get into everyone's hair again. He says he isn't being given enough time to talk to employees about their problems. The Branch Chief, Harry Wills, allows him a maximum of two hours a week away from his job, which sounds like enough time to me.

I've made some inquiries, though, and Kate Jones, Chief of Printing and Forms, allows the steward in that branch six hours a week and Bob Eakes, Chief of Procurement and Supplies, lets the steward in his branch have as much time as he wants.

Sid Owens intends to file a grievance if we don't start giving him as much time to confer with employees as the other stewards have.

The problem stems from the fact that the contract specifies "reasonable" time for stewards. To further complicate matters, the Department's managers have not been administering the contract uniformly and consistently, as a result some past practices have been established and the stewards are trying to "whipsaw."

Management will certainly try to negotiate hour limits on stewards at next negotiations.

For the present, consult with all supervisors and with the union, and try to work out an interim compromise.

U. S. CIVIL SERVICE COMMISSION
LABOR RELATIONS TRAINING CENTER

Memorandum

Subject: Management Negotiating Team

Date:

In Reply Refer To:

From: Mike Williams, Director
Office of Personnel and Labor Relations

Your Reference:

To: Jane Anderson
Labor Relations Officer

I was at lunch with Tom Adams the other day and we got onto the subject of labor relations. He wanted to know who I thought should be on the department's negotiating team. (His question took me by surprise since I didn't think we had to negotiate with AFSCME for another six months.) I told him I would have an answer for him next week.

It seems to me that you and I ought to be able to handle the negotiations without too much difficulty. Let me know if anyone else should be on the team. If we have more than a couple people on the team we will probably want to brief them on what they should do at the bargaining table and what their roles will be. Please send me a short memo on what such a briefing should cover if you decide there should be more than two people (you and me) on the team.

Team should have a first-line supervisor, a fiscal person, and the Personnel Officer and/or Director of OMS.

Six months lead time is just barely enough

Train all members of management's team

Review personnel policies and practices, work rules and work practices, grievances, arbitrations awards. Get input from all members of management on what they'd like to see changed.

Formulate management proposals.

U. S. CIVIL SERVICE COMMISSION
LABOR RELATIONS TRAINING CENTER

Memorandum

Subject: Labor-Management Relations Policy and Philosophy

Date:
In Reply Refer To:

From: Mike Williams, Director
Office of Personnel and Labor Relations

Your Reference:

To: Jane Anderson
Labor Relations Officer

I have just seen a copy of the "Guidelines for Government Management in the Organization and Management of Labor Relations," which some of our people received at a training course last month. One of the things which these Guidelines address is a labor-management relations policy and philosophy – which apparently we have not yet formulated.

In view of the increased union activity in the Social Insurance Department, I think it imperative that we formulate and implement a sound labor relations policy. This is the only way we can be sure that all members of the management team approach their labor relations responsibilities in a consistent and uniform manner.

Please send me as soon as possible a comprehensive list of topics or subject areas which you believe should be included in our labor-management relations policy and philosophy.

Support for labor relations program

Principles to be observed in management's relations with unions

Committment to modern and progressive work practices

Employee rights and union rights and responsibilities

Management rights and responsibilities

Positive approach to third party resolution of disputes

Improved well-being of employees through maximum appropriate participation in establishing personnel policies affecting them on the job.

Importance of sound labor relations to mission accomplishment

Indicate total involvement of labor relations in personnel management

Have Director sign it to indicate top level committment

U. S. CIVIL SERVICE COMMISSION
LABOR RELATIONS TRAINING CENTER

Memorandum

Subject: Representation Election

Date:

In Reply Refer To:

From: Mike Williams, Director
Office of Personnel and Labor Relations

Your Reference:

To: Jane Anderson
Labor Relations Officer

Since we are faced with a possible union representation election, I would like you to clarify for me the following points:

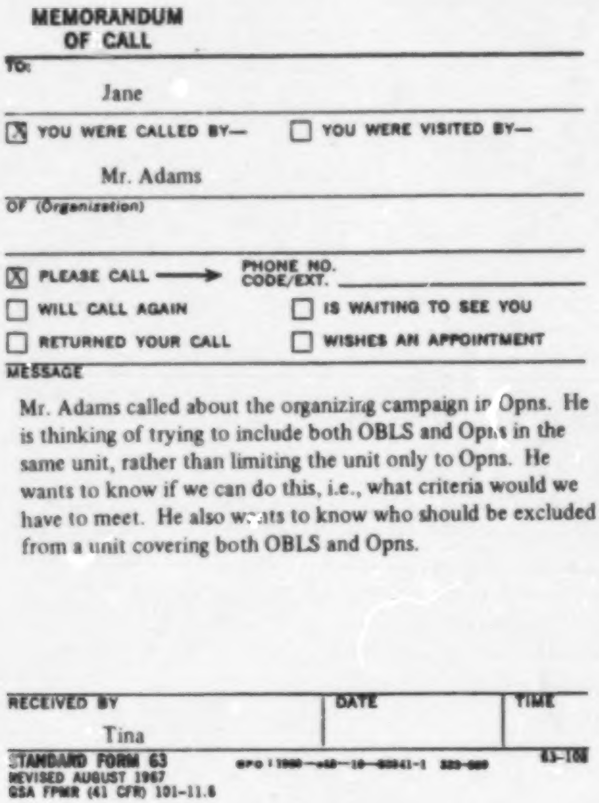
1. What criteria do the unions (both AFSCME and SEA) have to meet before the State Public Employee Relations Board will order an election? How is it determined whether a union wins or loses the election?
2. Who is responsible for conducting the election? If the agency is responsible, what are some of the technical/administrative details that we should anticipate in setting up the election? Should we get together with the union(s) in setting up the election if we are responsible for conducting it?
3. How should we go about getting the employees to vote in the election? (Maybe we can set up a system whereby each supervisor is responsible for ensuring that each employee, in fact, casts his or her ballot.)

Use your State's requirements for showing of interest and winning an election

Again your State law will be used to answer question #2

Allowing Supervisors to force employees to vote is coercion *(i.e. an unfair labor practice)*

Publicize election date and place; put polling booth in prominent place; give employees administrative time to vote; schedule election for pay day.



MEMORANDUM OF CALL

TO:
Jane

☒ YOU WERE CALLED BY— ☐ YOU WERE VISITED BY—

Mr. Adams

OF (Organization)

☒ PLEASE CALL → PHONE NO. CODE/EXT.

☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL ☐ WISHES AN APPOINTMENT

MESSAGE

Mr. Adams called about the organizing campaign in Opns. He is thinking of trying to include both OBLS and Opns in the same unit, rather than limiting the unit only to Opns. He wants to know if we can do this, i.e., what criteria would we have to meet. He also wants to know who should be excluded from a unit covering both OBLS and Opns.

RECEIVED BY	DATE	TIME
Tina		

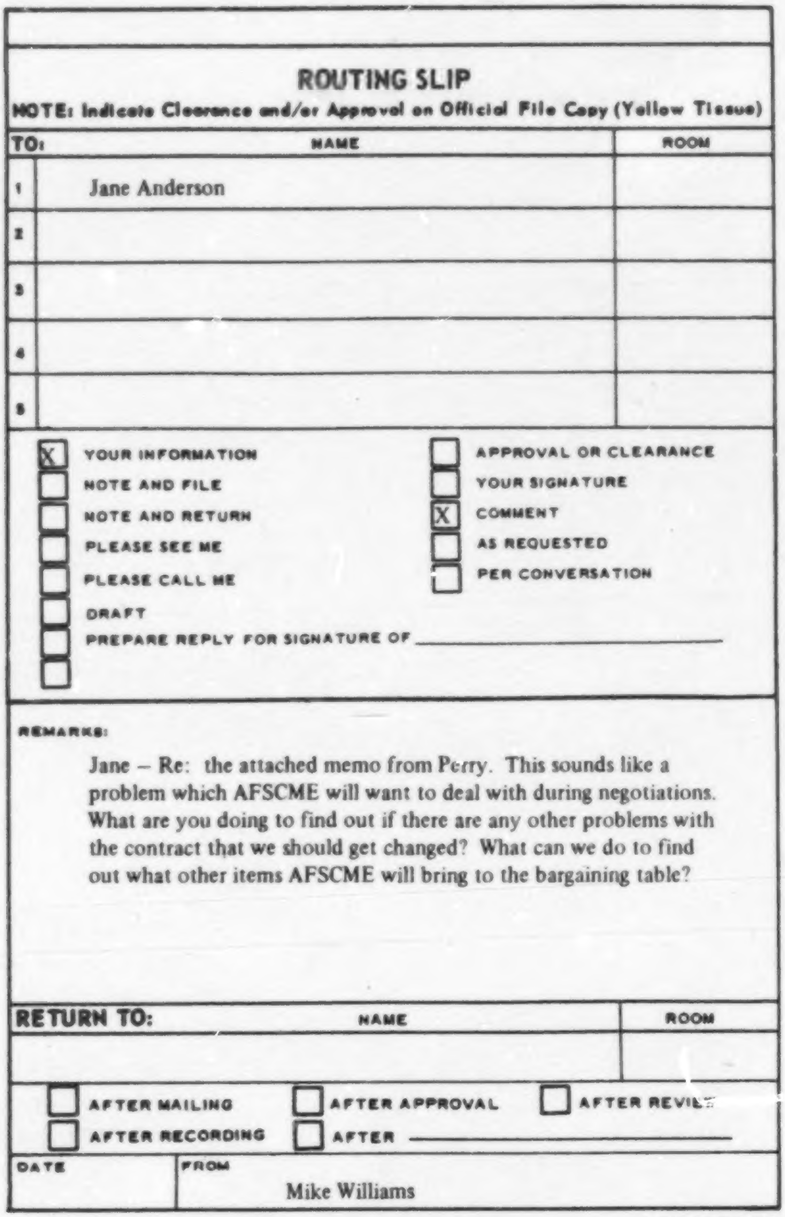
STANDARD FORM 63
REVISED AUGUST 1967
GSA FPMR (41 CFR) 101-11.6

GPO : [illegible]

63-108

Again your State's requirements for unit determination will govern here (community of interest, etc.)

General criteria for exclusions: professional employees unless they specifically vote for inclusion in a unit with other employees, management officials including first-line supervisors, confidential employees, employees who audit work of other employees, guards, employees in personnel or labor relations work in other than a purely clerical capacity.



ROUTING SLIP

NOTE: Indicate Clearance and/or Approval on Official File Copy (Yellow Tissue)

TO:	NAME	ROOM
1	Jane Anderson	
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☒ YOUR INFORMATION
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☐ NOTE AND RETURN
☐ PLEASE SEE ME
☐ PLEASE CALL ME
☐ DRAFT
☐ PREPARE REPLY FOR SIGNATURE OF ____________________
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☐ APPROVAL OR CLEARANCE
☐ YOUR SIGNATURE
☒ COMMENT
☐ AS REQUESTED
☐ PER CONVERSATION

REMARKS:

Jane – Re: the attached memo from Perry. This sounds like a problem which AFSCME will want to deal with during negotiations. What are you doing to find out if there are any other problems with the contract that we should get changed? What can we do to find out what other items AFSCME will bring to the bargaining table?

RETURN TO: NAME	ROOM

☐ AFTER MAILING ☐ AFTER APPROVAL ☐ AFTER REVIE
☐ AFTER RECORDING ☐ AFTER ____________________

DATE	FROM
	Mike Williams

GPO 919-732

CSC FORM 367
JULY 1966

Review grievances, arbitration awards, last negotiations, minutes of monthly union-management meetings

Talk to first-line supervisors

U. S. CIVIL SERVICE COMMISSION
LABOR RELATIONS TRAINING CENTER

Memorandum

Subject: Negotiations with AFSCME

Date:

In Reply Refer To:

From: Perry Stewart
Pers Off, OMS

Your Reference:

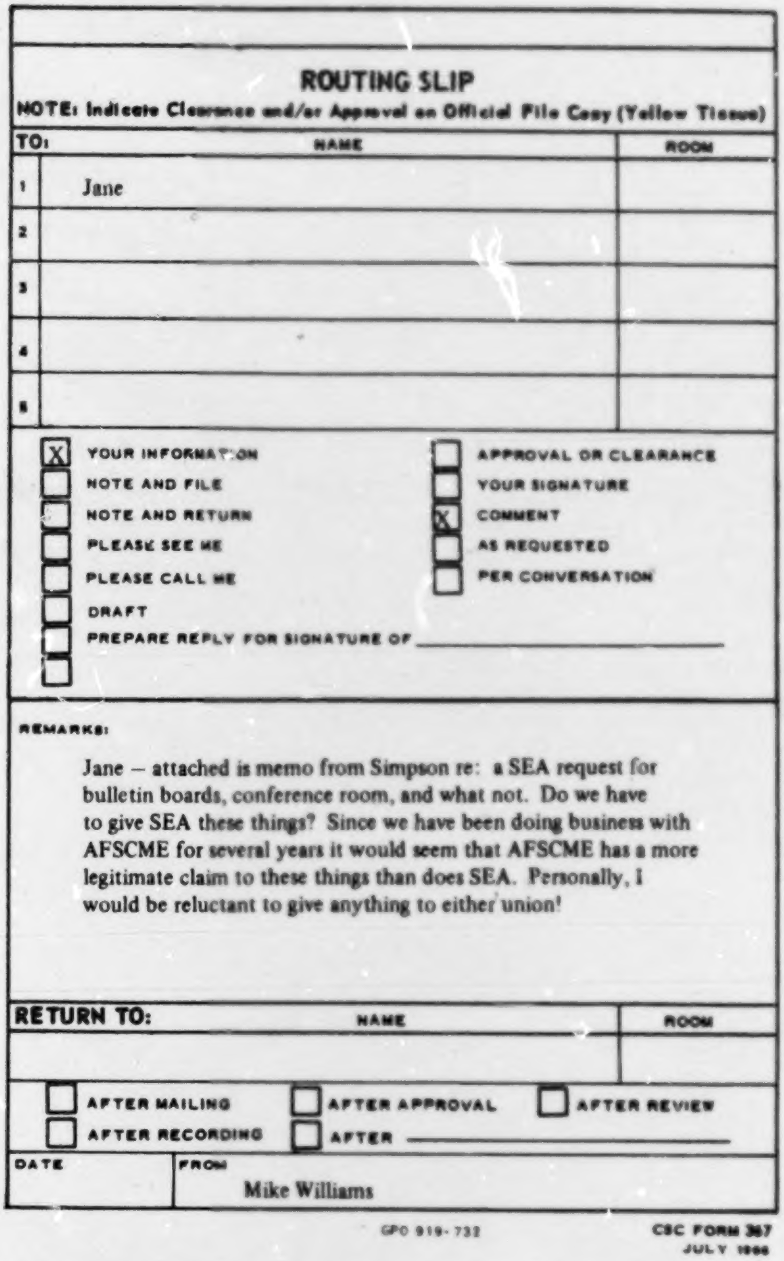
To: Mike Williams, Director
OPLR

In the last week or so two problems with the AFSCME contract have come to light. Specifically, we have had problems interpreting the articles dealing with union representation at the adjustment of a grievance and the assignment of overtime. I think we ought to clean up this language at the next negotiations.

Jane Anderson has been advised of these problems.

Begin, after consulting with line and staff management officials, to formulate management's initial and fallback positions on these subjects.

U. S. CIVIL SERVICE COMMISSION
LABOR RELATIONS TRAINING CENTER



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☒ COMMENT
☐ AS REQUESTED
☐ PER CONVERSATION

REMARKS:

Jane – attached is memo from Simpson re: a SEA request for bulletin boards, conference room, and what not. Do we have to give SEA these things? Since we have been doing business with AFSCME for several years it would seem that AFSCME has a more legitimate claim to these things than does SEA. Personally, I would be reluctant to give anything to either union!

RETURN TO:	NAME	ROOM

☐ AFTER MAILING
☐ AFTER RECORDING
☐ AFTER APPROVAL
☐ AFTER ____________
☐ AFTER REVIEW

DATE	FROM
	Mike Williams

GPO 919-732

CSC FORM 367
JULY 1966

Further guidance on technical aspects on next item.

However William's attitude is worth noting.

If your State law requires neutrality, is Williams being neutral?

U. S. CIVIL SERVICE COMMISSION
LABOR RELATIONS TRAINING CENTER

Memorandum

Subject: Request from State Employees Association

Date:

In Reply Refer To:

From: Pat Simpson, Director
Office of Operations

Your Reference:

To: Mike Williams, Director
Office of Personnel and Labor Relations

I have just received a letter from the State Representative of the State Employees Association advising me that SEA will be conducting an organizing campaign in the Office of Operations during the next several weeks. He wants us to let the union have some space on our bulletin boards for their campaign literature. He also wants to discuss with me the "feasibility" of the union having a conference room for after-hours meetings with employees and using the inter-office mail system to distribute union literature to all employees in the department. Oh yes, he also wants permission to distribute SEA literature in the cafeteria during lunch hours.

I would like to get together with you at 2:00 p.m. next Wednesday to discuss this.

Your State laws or regulations will cover rules for the organizing stage.

General guidance:

> Since neither AFSCME nor SEA are recognized as exclusive representative for Opns, both have equal rights to Department facility. Whatever management gives or doesn't give to one union, it must treat the other union equally.
>
> Management must consider what has been allowed to other employee organizations *(i.e. Employee Recreation Association, Credit Union).* If these organizations have been allowed bulletin boards, etc., management will probably have to allow the union the same things.

Distribution and solicitation is generally only allowed in non-work places on non-work time *(i.e. lunch, etc.)*

If SEA wants to distribute to all employees, this means they will be using the mail to contract those employees currently represented by AFSCME in OMS. As exclusive representative, AFSCME is protected from challenge by the existence of a contract. If SEA is allowed the use of inter-office mail, they should not be allowed to distribute to AFSCME's unit. The only time an exclusive representative and a challenging union have equal status is if the challenging union petitions for the unit during the open period of the contract or after the certification bar runs out. If the challenging union presents the necessary showing of interest and an election is ordered, then the unions have equal right to bulletin boards, solicitation places, meeting facilities, etc.

U. S. CIVIL SERVICE COMMISSION
LABOR RELATIONS TRAINING CENTER

Memorandum

Subject: Letter for Director's Signature

Date:

In Reply Refer To:

From: Mike Williams, Director
Office of Personnel and Labor Relations

Your Reference:

To: The Staff
Office of Personnel and Labor Relations

Please review the attached letter which I am preparing for Tom Adam's signature. We'll discuss it in greater detail at next week's staff meeting.

To: All Employees
Social Insurance Department

Subject: Normal working hours

It has recently come to my attention that some employees of the Social Insurance Department are not adhering to the normal working hours of 9:00 a.m. to 5:30 p.m. I wish to remind all employees that the normal work day begins at 9:00 a.m. and ends at 5:30 p.m., with employees allowed 30 minutes for lunch.

I have asked all supervisors and managers to insure that these hours are followed. In the future, employees will be put in a Leave Without Pay (LWOP) status for the time they are away from their jobs without prior approval from their supervisor.

I regret having to take these steps and I urge all employees to make every possible effort to work a full eight hours a day.

Thomas Adams

Director
Social Insurance Department

This memo concerns the touchy area of "past practice." The past practice in this case is not enforcing strictly (with use of LWOP status) the 9 - 5:30 working areas.

Before issuing memo, consult with union. Try to enlist their support for maintaining efficiency.

U. S. CIVIL SERVICE COMMISSION
LABOR RELATIONS TRAINING CENTER

Memorandum

Subject: Union organizing campaign in Operations

Date:

In Reply Refer To:

From: Tom Adams, Director
Social Insurance Department

Your Reference:

To: Jane Anderson
Labor Relations Officer

Thru: Mike Williams, Director
Office of Personnel and Labor Relations

Now that we have another organizing situation on our hands, I think it is time to start thinking about what we'll do if either AFSCME or SEA wins the election in the Office of Operations.

Specifically, do we continue to negotiate department-wide personnel policies? If AFSCME wins I am inclined to think perhaps we should. (After all, we've been doing this for some time in Office of Management Services). Maybe we could institute multi-unit bargaining, with the thought in mind that if AFSCME wins in Operations they will probably try to organize the professionals in the Office of Budget and Legal Services.

On the other hand, if SEA wins I think we should insist on negotiating only personnel policies promulgated by Operations. It's just too much of a hassle to consult over and negotiate department-wide personnel policies with every union that comes along.

Let me know in a few days what your thoughts are on this.

Multi-unit bargaining would be a good approach if AFSCME wins. Would overcome problems of fragmentation, inconsistency in personnel administration, and whipsawing.

If SEA wins, Department should consult with both at same level. If not, SEA might charge an unfair labor practice. By negotiating with AFSCME at department level, a past practice has been established.

U. S. CIVIL SERVICE COMMISSION
LABOR RELATIONS TRAINING CENTER

Memorandum

Subject: Employee grievances

Date:

In Reply Refer To:

From: Perry Stewart
Pers Off, OMS

Your Reference:

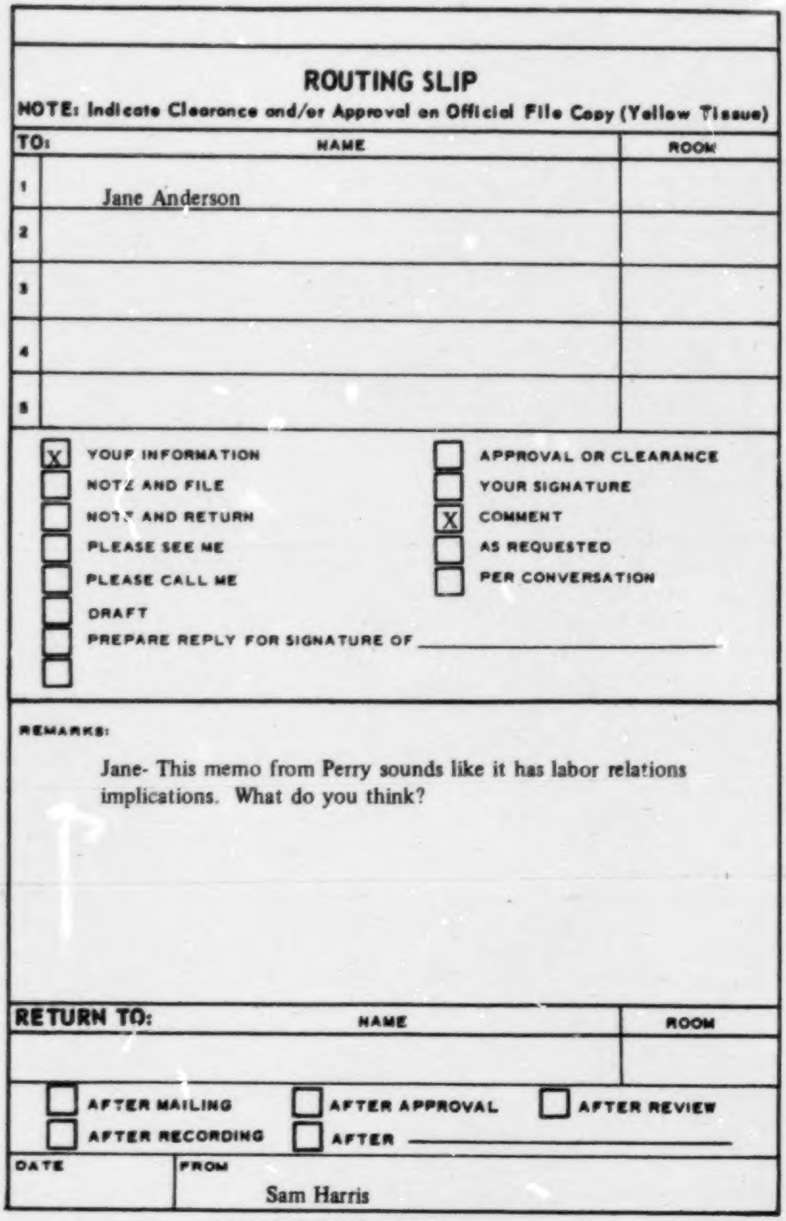
To: Jane Anderson
Labor Relations

Harry Wills (Inter-Office Mail) is having another problem with the steward, Sid Owens. Seems that Sid has filed three or four grievances this week because Harry has not been calling Sid in to be present at the "adjustment" of employee complaints and grievances. Harry maintains that the steward does not have to be present when grievances are settled at the first-line level.

What should I tell him?

Although Article XXVII, Section B, states that at the first level "the employee may or may not have a steward present," Section 7 states "A Union representative must be present at the adjustment of all grievances." Does management interpret "adjustment" and "settlement" as equivalent terms? The union obviously does. Management should have had a policy on this long ago. Management can risk going to arbitration to get a determination, but with only two months before re-negotiation of the contract, management should probably instruct the supervisor to allow the union to be present, making clear to the union that this is an interim arrangement until the contract is renewed.

Train supervisors in the interpretation of the contract!



ROUTING SLIP

NOTE: Indicate Clearance and/or Approval on Official File Copy (Yellow Tissue)

TO:	NAME	ROOM
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☒ YOUR INFORMATION
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☐

☐ APPROVAL OR CLEARANCE
☐ YOUR SIGNATURE
☒ COMMENT
☐ AS REQUESTED
☐ PER CONVERSATION

REMARKS:

Jane- This memo from Perry sounds like it has labor relations implications. What do you think?

RETURN TO: NAME	ROOM

☐ AFTER MAILING
☐ AFTER RECORDING
☐ AFTER APPROVAL
☐ AFTER ____________________
☐ AFTER REVIEW

DATE	FROM
	Sam Harris

GPO 919-732

CSC FORM 367
JULY 1966

U. S. CIVIL SERVICE COMMISSION
LABOR RELATIONS TRAINING CENTER

Memorandum

Subject: Possible discriminatory practices

Date:
In Reply Refer To

From: Perry Stewart
Pers. Officer, OMS

Your Reference:

To: Sam Harris
EEO

Yesterday Kate Jones, Chief of Printing and Forms in OMS, came in to see me about the "flagrant discriminatory practices in OMS." She alleges that females in OMS are denied promotional and training opportunities comparable to those given to male employees.

She showed me a petition with about 35-40 signatures which she plans to send to the Director. Near as I could tell the petition was signed from women not only in OMS but also from OBLS and Opns. I don't know if she is serious about sending it to Adams, but I wanted to alert you anyway.

The situation certainly does have labor-management relations implications!

Remember, in dealing with the women's group, that only the union has the right to negotiate personnel policies, practices, etc Management can consult with Jones' group but not negotiate.

The problem is further complicated by the fact that Jones is a supervisor and thus excluded from representation by the union. If, however, the group claims to represent women in the unit, the union must be informed and given the chance to be present at meetings.

U. S. CIVIL SERVICE COMMISSION
LABOR RELATIONS TRAINING CENTER

Memorandum

Subject: Kate Jones

Date:
In Reply Refer To:

From: Perry Stewart
Pers. Off, OMS

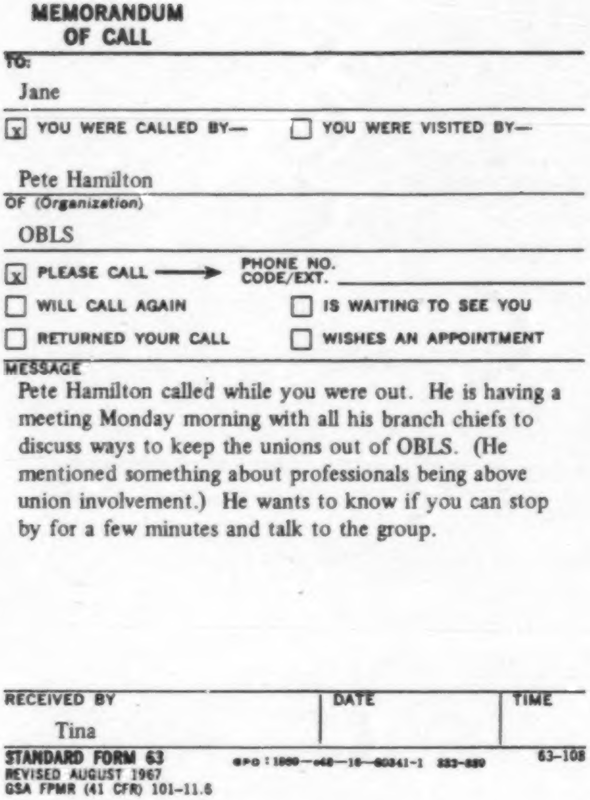
Your Reference:

To: Jane Anderson
Labor Relations

The Steward in Printing and Forms is giving Kate Jones a bad time because she didn't consult with him before making overtime assignments. The contract doesn't say she has to consult with him about overtime, but it does say she has the right to assign employees and to insure the efficiency of government operations. I told Kate she was well within her rights in not consulting with the Steward. Am I correct?

Jones has to consult with the union on overtime. Article V gives the union the right to consult on personnel policies practices and working conditions. Further the distribution of overtime is covered by the contract, so obviously the union has the right to consult on the subject. The contract contains no waiver of the union's right to consult. The management's right's clause is, in this case, less specific than the union's right to consult .

Remember, arbitrators give more weight to more specific contract clauses!



MEMORANDUM OF CALL

TO:
Jane

☒ YOU WERE CALLED BY— ☐ YOU WERE VISITED BY—

Pete Hamilton

OF (Organization)
OBLS

☒ PLEASE CALL → PHONE NO. CODE/EXT.

☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL ☐ WISHES AN APPOINTMENT

MESSAGE

Pete Hamilton called while you were out. He is having a meeting Monday morning with all his branch chiefs to discuss ways to keep the unions out of OBLS. (He mentioned something about professionals being above union involvement.) He wants to know if you can stop by for a few minutes and talk to the group.

RECEIVED BY	DATE	TIME
Tina		

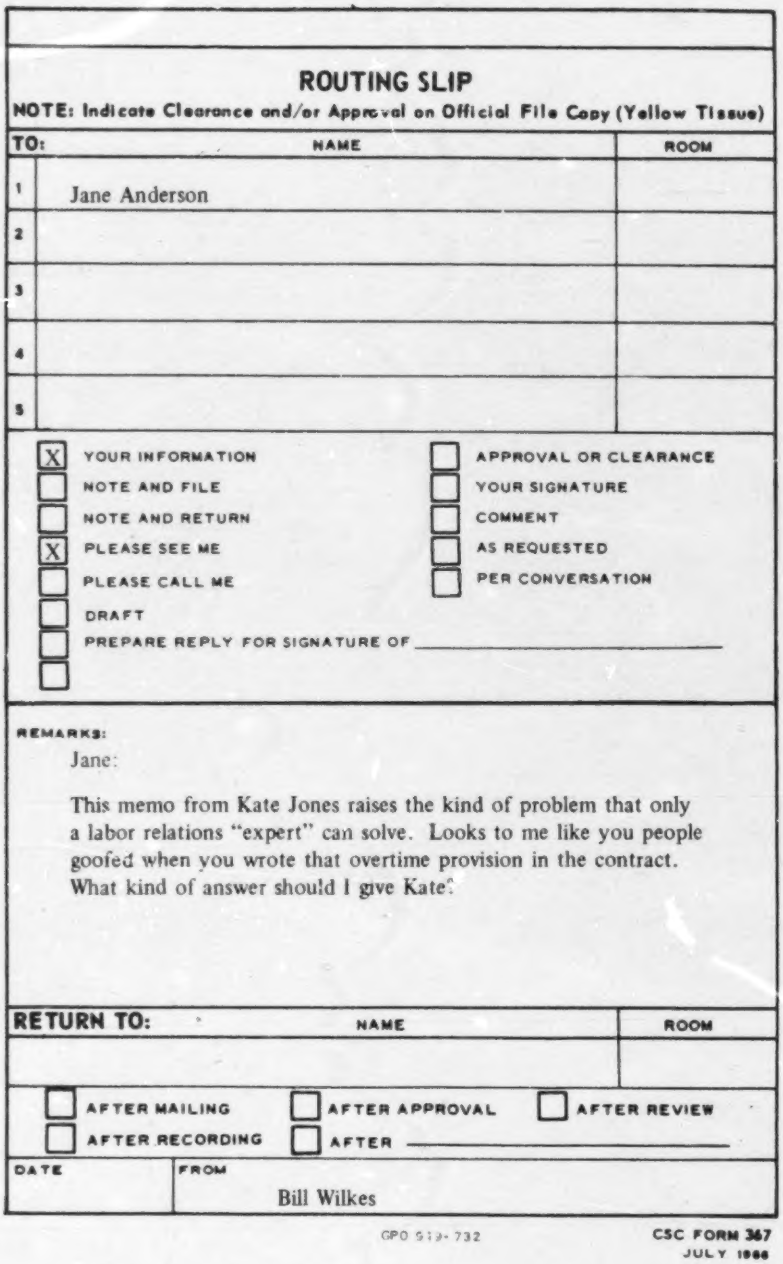
STANDARD FORM 63 GPO : 1969—[illegible]—80341-1 333-889 63–108
REVISED AUGUST 1967
GSA FPMR (41 CFR) 101-11.6

Professionals are not above union involvement. White collar organization is one of the biggest phenomena of the last ten years.

Begin reviewing personnel policies and practices and work rules and work practices.

Adhere to Department labor relations policy and philosophy.

Does your State law require neutrality of managers?



ROUTING SLIP

NOTE: Indicate Clearance and/or Approval on Official File Copy (Yellow Tissue)

TO:	NAME	ROOM
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☒ YOUR INFORMATION
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☐ NOTE AND RETURN
☒ PLEASE SEE ME
☐ PLEASE CALL ME
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☐ PREPARE REPLY FOR SIGNATURE OF ____________
☐

☐ APPROVAL OR CLEARANCE
☐ YOUR SIGNATURE
☐ COMMENT
☐ AS REQUESTED
☐ PER CONVERSATION

REMARKS:

Jane:

This memo from Kate Jones raises the kind of problem that only a labor relations "expert" can solve. Looks to me like you people goofed when you wrote that overtime provision in the contract. What kind of answer should I give Kate?

RETURN TO: NAME	ROOM

☐ AFTER MAILING ☐ AFTER APPROVAL ☐ AFTER REVIEW
☐ AFTER RECORDING ☐ AFTER ____________

DATE	FROM
	Bill Wilkes

GPO 519-732

CSC FORM 367
JULY 1966

Did management goof on the overtime provision? Actually, it's a pretty "management-oriented" clause.

U. S. CIVIL SERVICE COMMISSION
LABOR RELATIONS TRAINING CENTER

Memorandum

Subject: Assignment of Overtime

Date:

In Reply Refer To:

From: Kate Jones, Chief
Printing and Forms

Your Reference:

To: Bill Wilkes, Director
Office of Management Services

A problem has arisen between me and Tim Eldon, the union steward, about the way I assign overtime.

For the past two weeks we have been hard pressed to get out all the printing that this department requires. The Office of Operations has in particular made several heavy demands upon our printing capabilities. The only way we can possibly meet these demands is by working overtime at nights and on Saturdays.

In order to maximize the amount of work done during these overtime shifts, I have been giving the overtime assignments to the most productive workers. In other words, overtime goes to the "best qualified employee."

Tim Eldon insists that I should assign overtime equally among all employees. This would be impossible without causing a significant reduction in the amount of work done.

Until I hear differently from you, I am going to continue my practice of assigning overtime to the most productive workers.

According to contract, overtime goes to best qualified employees but only after employees currently assigned to the work are given the opportunity to work overtime.

Contract doesn't say equitably among all employees.

Jones should consult with her steward (he's got the right to consult with her) and discuss her assignments. She's within her rights, though, and doesn't have to change. She does have to consult.

U. S. CIVIL SERVICE COMMISSION
LABOR RELATIONS TRAINING CENTER

Memorandum

Subject: Coffee Breaks

Date:

In Reply Refer To:

From: Bob Eakes, Chief
Procurement and Supplies

Your Reference:

To: Jane Anderson
Labor Relations

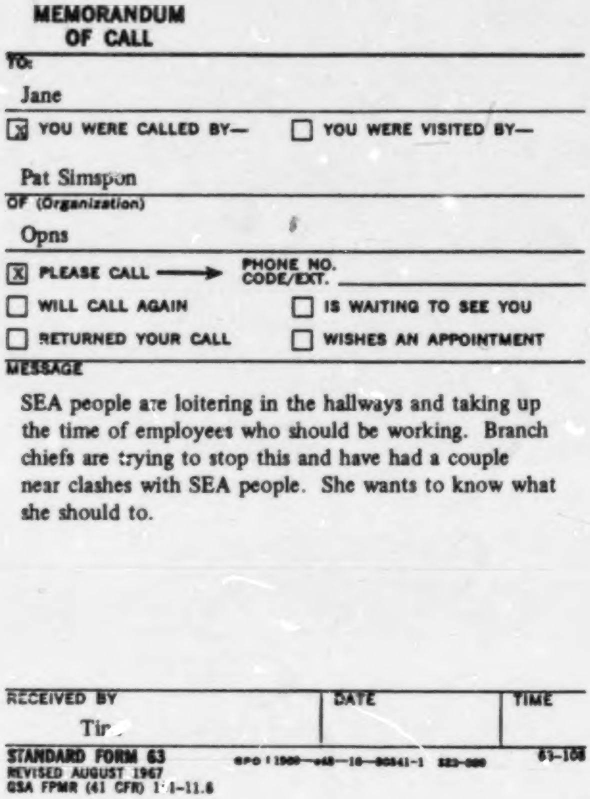
I've been having some problems in my branch with employees taking anywhere from 15 to 40 minute coffee breaks, instead of the 10 minute break they are supposed to take. Naturally, this has really been hurting production. So, last week I told them that I would tolerate no more than a 10 minute break and that anyone who took more than 10 minutes would get a letter of reprimand put in his official personnel folder.

The steward in my branch, Don Willis, blew sky high when he heard this. He says that employees have always taken about 20-25 minutes because it is impossible to order, pay for, and drink a hot cup of coffee in only 10 minutes. He's madder than a hornet because I didn't consult with him first.

The contract doesn't say anything about coffee breaks, so do I have to consult with him? I should have the right to crack down on abuses like this.

Again the problem is a past practice- the ten minute rule has never been enforced.

Yes, since coffee breaks are a working condition, Eakes has to consult with the union.



**MEMORANDUM
OF CALL**

TO:
Jane

☒ YOU WERE CALLED BY— ☐ YOU WERE VISITED BY—

Pat Simspon

OF (Organization)
Opns

☒ PLEASE CALL ⟶ PHONE NO. CODE/EXT.

☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL ☐ WISHES AN APPOINTMENT

MESSAGE

SEA people are loitering in the hallways and taking up the time of employees who should be working. Branch chiefs are trying to stop this and have had a couple near clashes with SEA people. She wants to know what she should to.

RECEIVED BY	DATE	TIME
Tir[illegible]		

STANDARD FORM 63
REVISED AUGUST 1967
GSA FPMR (41 CFR) 101-11.6

GPO : 1969—048—16—80341-1 332-380

63-108

Solicitation and distribution should be limited to non-work time in non-work places. Here it's taking place in a non-work place (the halls) but on work time.

Talk to SEA organizers- try to work out a non-work place (cafeteria, lobby) where union can contact employees without contacting them on work time.

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Courses To Take In Preparation for Teaching

Basic Labor-Management Relations, USCSC, Labor Relations Training Center
Collective Bargaining Negotiations, USCSC, Labor Relations Training Center
Labor Relations for Supervisors, USCSC, Labor Relations Training Center

Labor Relations Training Center Publications

Profiles of Public Sector Unions RN-377

Tactics and Techniques of Collective Bargaining Negotiations RN-376

Exclusivity: Its Impact On Management Dealings with Individual Employees and/or Non-exclusive Employee Groups RN-388

A Selected Bibliography of Technical Resources in Labor Relations RN-441

The Supervisor's Guide to Labor Relations In the Federal Government RN-59

Robert H. Hastings, *How To Bargain In The Public Service* RN-50

A Glossary of Collective Bargaining Terms RN-71

The Emergence of Public Sector Collective Bargaining RN-369

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